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MONTANA LEGISLATIVE HISTORY

Chapter 706 Session L 1983
Bill House 908 Senate

History and final status sheet x
Introduced bill x
Fiscal note x
Third reading bill x
Final version of bill x

House Committee on Natural resources
Hearing date(s)* 3/16
Executive action (vote) date(s)* 3/16
Comm. Report 3/24
Floor 2nd reading & vote 3/26; 4/20
Floor 3rd reading & vote 3/28; 4/21

Senate Committee on Rules; Agriculture
Hearing date(s)* 4/6 4/13 4/14
Executive action (vote) date(s)* 4/7; 4/14
Comm. Report 4/14
Floor 2nd reading & vote 4/14; 4/21
Floor 3rd reading & vote 4/15; 4/21

Conference or Free Conference Comm. x Yes ____ No
Hearing date(s)* 4/20
Executive action (vote) date(s)* 4/20

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? ____ Yes x No
Committee _____ Report _____

NOTES: The Law Library does not have the minutes for the free conference committee. They may be available from the Historical Society.

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Compiled by: SJL
Date: June 22, 2016

History and Final Status, 1983

INTRODUCED: 03/11/83
REFERRED TO COMMITTEE ON APPROPRIATIONS: 03/11/83
HEARING: 03/21/83
REPORT: 03/22/83, DO PASS
2ND READING: 03/22/83, DO PASS AYES: 77; NAYS: 5
3RD READING: 03/23/83, DO PASS AYES: 88; NAYS: 4

TRANSMITTED TO SENATE: 3/23/83
REFERRED TO COMMITTEE ON FINANCE & CLAIMS: 03/24/83
HEARING: 3/30/83
REPORT: 03/30/83, BE CONCURRED IN
2ND READING: 04/04/83 AYES: 39; NAYS: 4
3RD READING: 4/5/83 AYES: 46; NAYS: 2

RETURNED TO HOUSE: 4/5/83

TRANSMITTED TO GOVERNOR: 04/14/83
SIGNED: 04/18/83

HB 908 -- HARPER, BARDANOUVE, IVERSON, ET AL. -- ADDING CERTAIN PIPELINES TO THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT; PROHIBITING THE ISSUANCE OF PERMITS FOR CERTAIN AMOUNTS OF WATER WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR A STUDY BY A SELECT COMMITTEE OF WATER MARKETING; PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER.

INTRODUCED: 03/11/83
REFERRED TO COMMITTEE ON NATURAL RESOURCES: 03/11/83
HEARING: 3/16/83
REPORT: 03/25/83, DO PASS, AS AMENDED
2ND READING: 03/26/83, DO PASS, AS AMENDED AYES: 80; NAYS: 10
3RD READING: 03/28/83, DO PASS AYES: 86; NAYS: 11

TRANSMITTED TO SENATE: 03/28/83
REFERRED TO COMMITTEE ON RULES: 4/5/83
REPORT: 04/07/83, BE REREFERRED
REREFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION: 04/08/83
HEARING: 4/13/83
REPORT: 04/14/83, BE CONCURRED IN, AS AMENDED
2ND READING: 04/14/83, BE CONCURRED IN, AS AMENDED AYES: 46; NAYS: 4
3RD READING: 04/15/83 AYES: 48; NAYS: 0

RETURNED TO HOUSE WITH AMENDMENTS: 4/16/83
2ND READING: 04/18/83, BE NOT CONCURRED IN AYES: 91; NAYS: 7

CONFERENCE COMMITTEE APPOINTED: 04/18/83
CONFERENCE COMMITTEE DISSOLVED: 04/20/83
FREE CONFERENCE COMMITTEE APPOINTED: 04/20/83

FREE CONFERENCE COMMITTEE REPORT: 04/20/83

HOUSE
2ND READING: 04/20/83, ADOPTED AYES: 77; NAYS: 21
3RD READING: 04/20/83, ADOPTED AYES: 80; NAYS: 17

SENATE
2ND READING: 04/21/83, BE ADOPTED AYES: 50; NAYS: 0

3RD READING: 04/21/83, BE ADOPTED AYES: 48; NAYS: 2

TRANSMITTED TO GOVERNOR: 4/21/83
SIGNED: 4/29/83, CHAPTER 706

HB 909 -- MARKS, MENAHAN, DONALDSON, ET AL. -- REQUIRING THE GOVERNOR OR HIS DESIGNEE TO STUDY AND PREPARE RECOMMENDATIONS FOR PROVIDING SERVICES TO DEVELOPMENTALLY DISABLED PERSONS; PROVIDING FOR STAFFING AND USE OF CONSULTANTS BY THE COMMITTEE; ....

INTRODUCED: 03/14/83
REFERRED TO COMMITTEE ON HUMAN SERVICES: 03/14/83
REREFERRED TO COMMITTEE ON APPROPRIATIONS: 03/22/83
HEARING: 3/23/83
REPORT: 03/28/83, DO PASS
2ND READING: 03/28/83, DO PASS AYES: 64; NAYS: 26
3RD READING: 03/28/83, DO PASS AYES: 64; NAYS: 30

TRANSMITTED TO SENATE: 3/28/83
REFERRED TO COMMITTEE ON FINANCE & CLAIMS: 4/5/83
HEARING: 4/11/83
REPORT: 04/19/83, BE CONCURRED IN, AS AMENDED
2ND READING: 04/20/83 AYES: 50; NAYS: 0
3RD READING: 04/21/83 AYES: 48; NAYS: 1

RETURNED TO HOUSE WITH AMENDMENTS: 4/21/83
2ND READING: 04/21/83, BE CONCURRED IN AYES: 89; NAYS: 4
3RD READING: 04/21/83, BE CONCURRED IN AYES: 91; NAYS: 5

TRANSMITTED TO GOVERNOR: 4/21/83
SIGNED: 4/29/83, CHAPTER 687

HB 910 -- KEMMIS, VINCENT -- THE LOCAL GOVERNMENT TAX STABILIZATION ACT OF 1983; TO ESTABLISH A LOCAL GOVERNMENT BLOCK GRANT PROGRAM FUNDED BY A PORTION OF THE STATE INCOME TAX TO PROVIDE FINANCIAL ASSISTANCE TO MUNICIPALITIES AND COUNTIES IN MONTANA; TO AUTHORIZE LOCAL GOVERNMENTS TO IMPOSE A LOCAL OPTION INCOME TAX TO QUALIFY FOR A PORTION OF THE BLOCK GRANT PROGRAM FOR FISCAL YEAR 1987 AND SUCCEEDING YEARS; TO AUTHORIZE CERTAIN LOCAL OPTION HOTEL AND MOTEL ROOM TAXES; TO APPROPRIATE FUNDS FROM THE LOCAL GOVERNMENT BLOCK GRANT ACCOUNT CREATED BY THE ACT TO FUND STATE PAYMENTS TO LOCAL GOVERNMENTS; ....

INTRODUCED: 03/12/83
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 03/12/83
HEARING: 3/19/83
DIED IN COMMITTEE

HB 911 -- S. HANSEN, NORMAN -- TO APPROPRIATE $491,520 TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FOR INCREASING STATE SUPPLEMENTS TO CERTAIN ELIGIBLE SUPPLEMENTAL SECURITY INCOME RECIPIENTS RECEIVING PERSONAL CARE.

INTRODUCED: 03/16/83
REFERRED TO COMMITTEE ON APPROPRIATIONS: 03/16/83
HEARING: 3/26/83
REPORT: 03/28/83, DO NOT PASS
BILL KILLED: 03/29/83

HB 912 -- ELLERD, BOYLAN -- APPROPRIATING FUNDS TO STUDY ALTERNATIVES FOR FINANCING PRISON FACILITIES; ....

HOUSE BILL NO. 908

INTRODUCED BY Layon Bondurant Jean
Vincent Kennis by Layon

A BILL FOR AN ACT ENTITLED: "AN ACT ADDING CERTAIN PIPELINES TO THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT; PROHIBITING THE ISSUANCE OF PERMITS FOR CERTAIN AMOUNTS OF WATER WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR A STUDY BY A SELECT COMMITTEE OF WATER MARKETING; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 75-20-104, 75-20-216, 75-20-218, 75-20-303, 75-20-304, 75-20-1202, 85-1-205, AND 85-2-311, MCA; REPEALING SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the

water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection (10)(a) of this section;

~~(d) each pipeline greater than 20 inches in diameter or 30 miles in length and associated facilities designed for or capable of transporting water or using water as a transport medium;~~

~~(d)~~(e) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $750,000;

~~(e)~~(f) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of

heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 2. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies. (1) After receipt of an application, the department and department of health shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and list the deficiencies therein; and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department and department of health shall use, to the extent they consider applicable, valid and useful existing studies

gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries, and facilities and associated facilities designed for or capable of producing, gathering, processing, transmitting, transporting, or distributing crude oil or natural gas, and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable

of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of $10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of $10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $10 million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(c) each pipeline and associated facilities designed for or capable of transporting gas (except for natural gas),

and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health shall within 1 year following the date of acceptance of an application and the board of health or department of health, if applicable, within an additional 6 months issue any decision, opinion, order, certification, or permit required under the laws administered by the department of health or the board of health and this chapter. The department of health and the board of health shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department of health and board of health administer, and any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the determinations made under the laws administered by the department of health and the board of health. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). The decision, opinion, order, certification, or permit of the department

of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board and shall be utilized as part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in (a) and ~~(d)~~ (a) of 75-20-104(10) and for a facility as defined in (b) ~~and (c)~~ through (d) of 75-20-104(10) which is more than 30 miles in length and within 1 year for a facility as defined in (b) ~~and (c)~~ through (d) of 75-20-104(10) which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the

greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of highways; commerce; fish, wildlife, and parks; state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 3. Section 75-20-218, MCA, is amended to read:

"75-20-218. Hearing date -- location -- department to act as staff -- hearings to be held jointly. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. ~~Except for those hearings involving applications submitted for facilities as defined in (b) and (c) of 75-20-104(18), certification~~ Certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion thereof is to be located.

(2) Except as provided in 75-20-221(2), the department

shall act as the staff for the board throughout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department of health and the board of health shall hold any required permit hearings required under laws administered by those agencies in conjunction with the board certification hearing. In such a conjunctive hearing the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the department of health and the board of health."

Section 4. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision -- contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons therefor.

(3) Any certificate issued by the board shall include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facility;

(v) a plan for monitoring environmental effects of the proposed facility; and

(vi) a time limit as provided in subsection (4), during which construction of the facility must be completed;

(b) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) The board shall issue as part of the certificate the following time limits during which construction of a facility must be completed:

(a) For a facility as defined in (b)~~,~~ ~~(c),~~ or ~~(e)~~ ~~(d)~~ of 75-20-104~~(7)~~(10) that is more than 30 miles in length, the time limit is 10 years.

(b) For a facility as defined in (b)~~,~~ ~~(c),~~ or ~~(e)~~ ~~(d)~~ of 75-20-104~~(7)~~(10) that is 30 miles or less in length, the time limit is 5 years.

(c) The time limit shall be extended for periods of 2 years each upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction. Under this subsection, a good faith effort to complete construction includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced."

Section 5. Section 75-20-304, MCA, is amended to read:

"75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a utility or person subject to this chapter that a facility or associated facility has been damaged or destroyed as a

result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of subsections (2)(c), (3)(b), and (3)(c) of 75-20-301 and 75-20-501(5) and the requirements of subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial

effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in subsections (10)(b), (c), (d), ~~(e)~~, or ~~(e)~~ (f) of 75-20-104, for an associated facility defined in subsection (3) of 75-20-104, or for any portion of or process in a facility defined in subsection (10)(a) of 75-20-104 to the extent that the process or portion of the facility is not subject to a permit issued by the department of health or board of health.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection shall be credited toward the fee paid under 75-20-215 to the extent the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.

(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."

Section 6. Section 75-20-1202, MCA, is amended to read:

"75-20-1202. Definitions. As used in this part and 75-20-201 through 75-20-203, the following definitions apply:

(1) (a) "Nuclear facility" means each plant, unit, or other facility designed for, or capable of,

(i) generating 50 megawatts of electricity or more by means of nuclear fission,

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels, or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility;

(b) "nuclear facility" does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy.

(2) "Facility," as defined in 75-20-104~~(7)~~(10) is further defined to include any nuclear facility as defined in subsection (1)(a) of this section."

Section 7. Section 85-1-205, MCA, is amended to read:

"85-1-205. Acquisition of water in ~~Fort-Peck-Reservoir~~

federal reservoirs. The department may acquire water by purchase option or agreement with the federal government from ~~the Fort-Peck-Reservoir~~ any federal reservoir for the purpose of sale, rent, or distribution for industrial use. In such cases, the department is not required to construct any diversion or appropriation facilities or works, and it may sell, rent, or distribute such water at such rates and under such terms and conditions ~~as it considers appropriate~~ as are established under the provisions of 85-2-311."

Section 8. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. ~~The~~ (1) Except as provided in subsections (2) and (3), the department shall issue a permit if the applicant proves by substantial credible evidence that the following criteria are met:

~~(1)~~(a) there are unappropriated waters in the source of supply:

~~(a)~~(i) at times when the water can be put to the use proposed by the applicant;

~~(b)~~(ii) in the amount the applicant seeks to appropriate; and

~~(c)~~(iii) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

~~(2)~~(b) the rights of a prior appropriator will not be

adversely affected;

~~(3)(c)~~ the proposed means of diversion, construction, and operation of the appropriation works are adequate;

~~(4)(d)~~ the proposed use of water is a beneficial use;

~~(5)(e)~~ the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved~~;~~

~~(6) an applicant for an appropriation of 10,000 acre-feet a year or more and 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected;~~

~~(7) except as provided in subsection (6), the applicant proves by substantial credible evidence the criteria listed in subsections (1) through (5).~~

(2)(a) The department may not issue a permit for an appropriation of 5,000 or more acre-feet of water a year or 7 or more cubic feet per second of water unless:

(i) the department makes an affirmative finding that:

(A) the criteria in subsection (1) are met;

(B) the applicant has proven by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected; and

(C) the proposed appropriation is in the public interest; and

(ii) the legislature affirms the findings pursuant to subsection (2)(c).

(b) In making such a finding, the department shall consider:

(i) existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the economic feasibility of the project;

(iv) the effects on the quantity, quality, and potability of water of existing beneficial uses in the source of supply;

(v) the effects on private property rights by any creation of or contribution to saline seepi and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(c) A permit for an appropriation of 5,000 or more acre-feet of water a year or 7 or more cubic feet per second of water under subsection (2) may not be issued unless the department petitions the legislature and the legislature affirms the findings of the department.

(3) An appropriation, diversion, impoundment, restraint, or attempted appropriation, diversion, impoundment, or restraint contrary to the provisions of this section is null and void. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized appropriation, diversion, impoundment, or other restraint. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, or otherwise restrain or control any of the waters within the boundaries of this state except in accordance with this section."

NEW SECTION. Section 9. Repealer. Section 85-1-121, MCA, is repealed.

NEW SECTION. Section 10. Study of water marketing. (1) There is a select committee on water marketing. The select committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The select committee shall meet as often as necessary to complete the study of water marketing required under this section.

(2) The select committee on water marketing shall undertake a study of the economic, tax, administrative, legal, social, and environmental advantages and

disadvantages of water marketing.

(3) The select committee shall study the desirability and feasibility of in-state and out-of-state marketing of limited amounts of water for industrial purposes from existing state and federal reservoirs and from proposed reservoirs with water reservations.

(4) The study must include:

(a) the present and future in-state demands for water for domestic, municipal, agricultural, industrial, recreational, in-stream flows, and other beneficial uses;

(b) how best to encourage a negotiated resolution of the conflicting demands of water users within the Missouri River basin and to discourage litigation and congressional action initiated by lower basin states;

(c) the potential effects of a coal slurry pipeline on coal production and the economic and environmental effects of increased coal production;

(d) the effects of a coal slurry pipeline on the railroad industry and rail rates for noncoal shippers;

(e) alternative structures for a water marketing program;

(f) alternative uses of revenue derived from water marketing; and

(g) the potential ecological effects of the installation and operation of coal slurry pipelines.

(5) The select committee shall solicit the advice of the department of natural resources and conservation, various interested industries, conservation groups, appropriate state and federal agencies, and the public in carrying out its duties under this section.

(6) The environmental quality council shall provide staff assistance to the select committee. The select committee may contract with experts and consultants, in addition to assistance from the environmental quality council staff, in carrying out its duties under this section.

(7) The select committee shall report its findings and recommendations for legislation, if any, to the 49th legislature.

NEW SECTION. Section 11. Appropriation. There is appropriated from the renewable resource development clearance fund account to the environmental quality council for the biennium ending June 30, 1985, $80,000 for the study of water marketing by the select committee on water marketing required by section 10.

NEW SECTION. Section 12. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from

the invalid applications.

NEW SECTION. Section 13. Effective date. This act is effective on passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 495-83

FISCAL NOTE

Form BD-15

In compliance with a written request received March 14, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 908 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 908 places pipelines of greater than 20 inches in diameter or 30 miles in length, along with their associated facilities, designed for or capable of water transportation, under the provisions of the Major Facility Siting Act. It also provides that the Department of Natural Resources and Conservation may not issue a permit for and appropriation of 5,000 or more acre-feet of water a year or 7 or more cubic feet per second, without first making certain determinations required by the bill then petitioning the legislature for affirmation of the department's findings.

ASSUMPTIONS:

1) Fifty applications under Montana Water Law per year of 7 cubic feet per second or 5,000 acre-feet per year or more.
2) Only 10 percent of these applications would qualify for the EIS fee under Montana Water Law to cover department costs; the other 90 percent must be covered by additional appropriation from the general fund.
3) Average cost per application, $3,180.
4) Review of approximately 15 applications under Montana Water Law would be contracted out at $3,000 each.
5) Applications under the Major Facility Siting Act would generate revenues from EIS fees which would offset any increase in expenditures, resulting in a net effect of zero. It is not possible to estimate how many applications would be received or the total revenues and expenditures that would be generated for pipeline projects under the siting act provisions.

Continued

David M. Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-18-83

FISCAL IMPACT:

	FY84	FY85
Revenue		
Fees	$ 16,000	$ 16,000
Expenditures		
Personal Services	68,400	68,400
Operating Expenses	57,500	57,500
Equipment	3,000	-0-
Total	$128,900	$125,900
Net Effect (Revenue Less Expenditures)	(112,900)	(109,900)

LONG-RANGE EFFECTS:

A significant increase or decrease in the number of applications, from the estimate of 5[illegible] annually, would cause a proportionate increase or decrease in costs of this program.

COMMENT:

There is appropriated $80,000 to the Environmental Quality Council from the renewable resource development clearance fund account for the study of water marketing.

FISCAL NOTE 17:N/2

HOUSE NATURAL RESOURCES COMMITTEE MINUTES
March 16, 1983

The House Natural Resources Committee convened at 7:10 p.m. on March 16, 1983, in the House Chambers, with Vice-Chairman Bob Ream presiding and all members present except Reps. Bergene, Brown, Hand, McBride, Quilici, Iverson and Fagg, who were excused.

Vice-Chairman Ream introduced the committee members and explained that he was chairing the hearing as Chairman Harper was the sponsor of one of the bills. He said each chief sponsor would introduce his bill and have several witnesses speak for his bill. After this the hearing would be opened so all could make comments on any of the three bills.

The three bills heard were HBs 893, 894 and 908.

HOUSE BILL 893

REPRESENTATIVE TED NEUMAN, District 33, chief sponsor, introduced his bill and a copy of his testimony is Exhibit 1 of the minutes.

LEO BERRY, Director, Department of Natural Resources and Conservation, spoke next in support and a copy of his testimony is Exhibit 2 and a copy of his suggested amendments is Exhibit 3.

TED DONEY, attorney in private practice, former director of the Department of Natural Resources and Conservation, spoke in support and a copy of his testimony is Exhibit 4.

K.M. KELLY, Montana Water Development Association, spoke next in support. He said they support both this bill and HB 894. He said their organization represents a broad section of Montanans - farmers, ranchers, industrialists, lawyers, individuals - and have supported water development since 1943. He said they feel we have bought all the time we can afford to buy and the time has come that we must reserve the water for Montana's use. He said they fully support Mr. Doney's testimony and feel that a study will do nothing but delay the inevitable and so urged the committee to pass this bill or HB 894.

HOUSE BILL 894

REPRESENTATIVE BOB MARKS, District 80, chief sponsor, introduced his bill and a copy of his testimony is Exhibit 5 of the minutes and a copy of his suggested amendments is Exhibit 6 of the minutes.

MIKE FITZGERALD, President, Montana Trade Commission, spoke in support and a copy of his testimony is Exhibit 7 of the minutes. He said he believes Mr. Doney is right that we have a window of opportunity that will not last long, others will claim our water and capture our potential coal markets. He said they support both bills, but do take exception to 893s including oil and natural gas pipelines into the Major Facility Siting Act.

JAMES D. MOCKLER, Montana Coal Council, spoke in support. A copy of his testimony is Exhibit 8 of the minutes.

MONS TEIGEN, Montana Stockgrowers and Cowbelles, said both organizations want to go on record as supporting both bills. He said they had not arrived at this decision lightly as it is a matter of serious concern to both organizations. He said ten or fifteen years ago they opposed the sale of Montana's water. Mr. Teigen said the bills' sponsors and representatives of the DNRC had been invited to speak before their organizations and while they were a fairly hostile group to start with, answers received helped to settle concerns. He said one of the problems they had years ago was the talk of using underground water from the Madison formation in southeastern Montana. He said this was objectionable then and still would be. He said at issue here is stored water and water that is available, surplus to our needs. He said he felt one of the cases brought to light that has not been mentioned yet is the situation that exists with the Tongue River Reservoir. He said he understands the Tongue River Dam is in need of repair, but agriculture as such just can't afford to put the money forward to rebuild that structure. If it were possible to sell some water, and build the structure a little higher, perhaps agriculture could continue to beneft from the use of that water and some of it could be sold to some industrial user. He said he felt it was time for us in Montana to get our heads out of the sand and realize what is going on around us. He said we keep talking about development and yet every time a proposal comes up we shoot it down for one reason or another. He said speaking personally he has three children and two have had to leave the state in order to get gainful employment. He said we should get on with the job, get Montana on the road and provide some of these jobs so we can keep the kids around here. He said his organization is not opposed to selling a little water off if we can get paid for it. A copy of his witness statement is Exhibit 9.

HOUSE BILL 908

REPRESENTATIVE HAL HARPER, District 30, chief sponsor, introduced his bill and a copy of his testimony is Exhibit 10.

MIKE MELOY, lawyer practicing in Helena, speaking for himself, spoke in support and a copy of his testimony is Exhibit 11 of the minutes. Exhibit 12 is a letter written by Mr. Meloy to Chairman Harper and Senator Blaylock. Copies of this were given to all the members.

PAUL SMITH, Boulder, spoke in support and a copy of his testimony is Exhibit 13.

SHARON MORRISON, Helena, representing self, spoke in support and a copy of her testimony is Exhibit 14.

DOROTHY BRADLEY was not able to be present but copies of her comments were given to the committee members and a copy is Exhibit 15 of the minutes.

Vice-Chairman Ream now opened the meeting to testimony from the floor on any of the three bills being heard.

DON BOGGS, representing the Blackfeet Tribe, spoke in favor of HB 908 and a copy of his testimony is Exhibit 16 of the minutes. Exhibit 16b is a letter he left from Cate Crowley dealing with Indian water rights.

JAMES T. MULAR, State Legislative Director, Brotherhood of Railway and Airline Clerks, spoke in opposition to all three bills and a copy of his testimony and exhibits is Exhibit 17 of the minutes. Mr. Mular also left for the record 180 petitions signed by 3,424 people opposing coal slurry pipelines (these are attached to the minutes).

MORRIS GULLICKSON, Legislative Representative for United Transportation Union, AFL-CIO, spoke in opposition to all three bills. A copy of his testimony is Exhibit 18 of the minutes.

REPRESENTATIVE ROBERT BACHINI, District 7, said he would like to go on record as opposing HBs 893 and 894 and in support of HB 908.

WYATT FROST, Cement Workers Local 239, Three Forks, spoke in opposition to all three bills. A copy of his testimony is Exhibit 19 of the minutes.

LARRY DODGE, small businessman from Helmville, spoke opposing HBs 893 and 894 and supporting HB 908 and a copy of his testimony is Exhibit 20 of the minutes.

MARY B. HAMILTON, Stevensville, representing self, spoke in opposition to HBs 893 and 894 and a copy of this testimony is Exhibit 21 of the minutes. She said she was ambivalent on HB 908. She said she does like caution. She felt this bill is another delay tactic and she said sometimes delay is the

only tool to be had. She said once a resource is politicized there are very few tools left. She said in this respect she supports HB 908.

TERRY MURPHY, President of Montana Farmers Union, spoke as a proponent of HB 893 and HB 894 and a copy of his testimony is Exhibit 22. He said their executive board and membership were both split on this issue.

REPRESENTATIVE MARY ELLEN CONNELLY, District 15, spoke in opposition to HBs 893 and 894 and in support of HB 908. She said one of the most serious problems is what this will do to the states that share water resources. She said there will be strong competition to make water sales at the expense of the neighboring states. She said another problem is land condemnation if we have coal slurry pipelines. She said another concern is the loss of railroad jobs. She left a signed petition with 40 signatures from the Whitefish-Kalispell area opposing coal slurry pipelines and this petition is Exhibit 23 of the minutes.

Vice-Chairman Ream said Speaker of the House, Dan Kemmis, who had planned to be a speaker on HB 908 but was unable to be present earlier was now here and would speak on that bill.

REPRESENTATIVE DANIEL KEMMIS, District 70, spoke in support of HB 908 and a copy of his testimony is Exhibit 24.

VERNON WESTLAKE, Gallatin County Agricultural Preservation Association, the Park County Legislative Association, and T.E.A., Bozeman, spoke in opposition to HBs 893 and 894 and a copy of his testimony is Exhibit 25 of the minutes.

SAM RYAN, Montana Senior Citizens, said he opposed all the bills and hoped the committee would not pass any of them.

BOB VIRTS, President of the Montana Senior Citizens Association, spoke in opposition to HBs 893 and 894 and a copy of his testimony is Exhibit 26.

GRACE EDWARDS, Northern Plains Resource Council, spoke in opposition to HBs 893 and 894 and in support of HB 908. She said they support efficient and responsible development of Montana water. She said it is not necessary to rush into another large water development act and questioned the repealing of the coal slurry ban. She said people should know the reason for the pressure, the benefits and the dangers of the repeal. She said the public must be involved in anything of this magnitude. She suggested that public members be included in the study committee.

HERB MOBLEY, Tongue River Water Users Association, said he had been involved in water development all his life. He said they accept the concepts and support HB 894. He urged the committee to listen to Mr. Doney's recommendations. He said their Tongue River High Dam which had been authorized in 1967 but yet unfunded is needed to solve their flood water problem. He said their Board of Directors had voted unanimously on the attached list of recommendations. This attachment is Exhibit 27 of the minutes.

WILLA HALL, League of Women Voters of Montana, spoke in support of HB 908 and in opposition to HBs 893 and 894. A copy of her testimony is Exhibit 28 of the minutes.

BILL FOGARTY, Administrator of the Transportation Division, Department of Commerce, spoke next and a copy of his testimony is Exhibit 29.

DON SKAAR, Montana Chapter of the Sierra Club, spoke in opposition to HBs 893 and 894 and in support of HB 908 and a copy of his testimony is Exhibit 30 of the minutes.

LEO BERRY, Director of the Department of Natural Resources and Conservation, presented the testimony of the department on HB 908. A copy of this is Exhibit 31 of the minutes.

JO BRUNNER, Women Involved in Farm Economics, said overall they find Rep. Neuman's HB 893 most agrees with their organization's aims. A copy of her testimony is Exhibit 32 of the minutes. She said Pat Underwood of the Farm Bureau and Steve Meyer, Conservation Districts, who were unable to attend, had asked that they be recorded as concurring with WIFE's testimony.

TONI KELLEY, Chairman of the Northern Plains Resource Council, spoke in support of HB 908 and a copy of her testimony is Exhibit 33.

DON SNOW, Stevensville, representing self, spoke in support of HB 908. A copy of his testimony is Exhibit 34.

SUSAN COTTINGHAM, Environmental Information Center, said their organization was formed to promote the wise use and conservation of our state's resources and she said they continue to do so tonight by opposing HBs 893 and 894 and supporting HB 908. She felt it would be good to amend the instate ban to require legislative approval of all large water diversions. Also, she said it is important to fund the water adjudication process and asked the committee to use political will to get the needed revenue to continue this. She said we should move with

all due speed to begin to settle the instream reservation program in the other basins as we have done in the Yellowstone Basin. She said they would like to echo Rep. Kemmis when he said Montana should take the leadership in the Missouri Basin states to avoid the kind of water war we have not seen before. She said she felt we seriously threaten the 44 Flood Control Act and the agreements that were reached if we don't begin to make overtures to those states in a responsible manner. She said they were pleased to see the Governor of Wyoming use this type of prudent and cautious approach when he vetoed the legislation that came out of the Wyoming legislature.

LLOYD ANDERSON, Montana Senior Citizens Association, spoke in opposition to HB 893 and a copy of his testimony is Exhibit 35.

JOHN BYRD, representing self, spoke in opposition to HBs 894 and 893 and a copy of his testimony is Exhibit 36.

ROBERT VANDERVERE, concerned citizen, said he respects all the legislators whose names are on the bills. He felt, though, that Rep. Harper's bill seems to hit the nail on the head. He said they don't know how much water they have and it should be found out by a study.

WILLIAM A. BRASHER, Burlington Northern Railroad Co., spoke next and a copy of his testimony is Exhibit 37.

ESTHER D. RUUD, Montana Cattlemen's Association, said they support most of HBs 893 and 894 and oppose 908. A copy of her testimony is Exhibit 38 of the minutes.

CHESTER W. PETERSON, Columbus, representing Stillwater County Water Users, spoke in opposition to HBs 893 and 894 and in support of HB 908. A copy of his testimony is Exhibit 39 of the minutes.

WALTER ARCHER, Olive, President of the Powder River Protective Association, Vice Chairman of the Northern Plains Resource Council, spoke in support of HB 908 and in opposition to HBs 893 and 894. A copy of his testimony is Exhibit 40.

WARD SHANAHAN, Northern Tier Pipeline, said they aren't in the coal business or the water business but in the crude oil pipeline business. He said each one of the bills has language in it modifying the MFSA which gives them cause for alarm. He said from the discussions this evening the intent is to take the language out. He said he would like to participate in that.

GORDON McGOWAN, former legislator, said he has had more experience introducing water legislation than anybody in the state of Montana and so he understood what the concerns were. He

said he recognized the problems and they are serious. He said he had not had a chance to fully check through the bills but after a cursory check could see some good things in both HB 893 and HB 894 and he felt that reasonable people could now sit down and take the best of them and put something together for the good of the state of Montana. He said we are already 75 years behind. He said there was a water code introduced in Montana in 1907 - a new water code. Between 1907 and 1939 it was introduced six times more and killed each time. He said he had introduced the water code eight times before it finally got through. So, he said, we move slowly. He said Mr. Kemmis has logic in his statements that we should slow down and take another look, but if you study this for two years when you come back a lot of the same people will be here with the same objections. He said you can make big mistakes by moving too fast but you can also make bigger ones sometimes by moving too slow. He mentioned other states and their water problems and how California may be looking to take water out of the Yellowstone. He said on the pipelines if you start taking water out of the Fort Peck Dam you would have the Corps of Engineers and downstream users checking it out and they have some very powerful lobbyists. He said before you can agree to sell you will have to be sure you can commit a certain amount of water year in and year out. He urged the committee to lay aside their differences political wise as they are dealing with the future of Montana and get on with the program. He said he would rather see them do something than to do nothing as we are already 75 years behind.

ART HAYES, Birney, said he supported HB 908 but opposed HBs 893 and 894. He said last year Cyprus Coal Company along with the Kindred Cattle Company made application for over 9000 acre feet of water from Haymow Creek. He said this is a small stream that in some years won't even flow 9000 acre feet. Downstream water users filed a protest with DNRC. He said if that amount was withdrawn the stream would be degraded so badly they wouldn't be able to use it on their fields. He said HB 908 recognizes the need for having the water usable as well as the prior right to it. He said this shows the kind of issues that need to be carefully considered before we get into marketing water. He said Cyprus has withdrawn its application. He said the loss of 20 to 30,000 acre feet from the Tongue River for a slurry pipeline in combination with the mining of 20 to 30 million tons of coal that would be going through that pipeline would build a salinity problem in the Tongue River that would put irrigators out of commission. He said let's get on with the business on hand and find out how much there is and where it is. He said there should be a public study and a public debate before we make the important decision of taking water from the basin.

Vice-Chairman Ream opened the meeting to closing remarks as there were no questions from the committee.

REPRESENTATIVE HARPER thanked all the people for sticking it out. He said less than one month ago we heard Pat Libbs talk to us on this floor and he urged us to go slowly on coal slurry. He said in 1981 the legislature passed a resolution directing the DNRC to study the best way to protect the waters of the state and the conclusion was that you had better study the issue before you do anything about it. He said other reports have recommended the same. The final report of the Economic Development Project recommended that a study be done. The governor's Report to the Legislature on the Economic Development Program recommended a study. Just a few days ago Governor Hirscheler vetoed a bill that just barely passed the Wyoming legislature. He said they needed more time to study it and felt it was important to wait for the federal government to act so they could take full advantage of the federal legislation. Rep. Harper said those are sound reasons and we have too much to lose by acting in haste. He said let's not let ourselves be put in a dangerous position and rather just take the time to answer just a portion of the questions that have been asked here this evening.

REPRESENTATIVE BOB MARKS said he would like to assure the committee that they are not going to drain the rivers and they are not going to drain the reservoirs. He said the amount of water being talked about is not very large. He said a small farm project on the Missouri River and getting water from Canyon Ferry would take this much water as it is only four good ditchfuls of water. He said another comparison is if you thought of Fort Peck as being a barrel of water then this amount proposed, 50,000 acre feet, would be a half cup. He said this could help to provide the finances needed to finish the adjudication process. He said to be careful of doing anything with the eminent domain law for if you preclude its use in a slurry pipeline the only one that would have the needed right of way is Burlington Northern. He thanked the committee and the people for their time.

REPRESENTATIVE NEUMAN also said he appreciated the time given this evening. He said he would like to address the study. He said not many things have been studied as much as our water. He felt the information was available and the delay of two more years is just a waste of effort.

The meeting adjourned at 11:20 p.m.

Information presented for the record as time was not sufficient was:

CATHY CAMPBELL, Montana Association of Churches, supporting HB 908, Exhibit 41.

W. S. ARTHUR, Stillwater Water Users Association, supporting HB 908 and opposing HBs 893 and 894, Exhibit 42.

JOE T. CHARVAT, Denton, opposing HBs 893 and 894, Exhibit 43.

Respectfully submitted,

BOB REAM, VICE-CHAIRMAN

Emelia A. Satre, Sec.

MEMORANDUM

TO: HOUSE NATURAL RESOURCES COMMITTEE MEMBERS

FROM: John Carter

RE: Bill Summaries for HBs 893, 894, 908

DATE: March 16, 1983

HB 893
Neuman

This bill would authorize the Department of Natural Resources and Conservation (DNRC) to acquire rights to appropriate a maximum of 50,000 acre feet of stored water for the purpose of marketing same for industrial uses (including coal slurry). Specifically, the bill would:

- amend an existing statutory definition that establishes coal slurry as a non-beneficial use of water;
- authorize the DNRC to acquire water or water storage from any federal reservoir for any use (existing law allows only for the acquisition from Fort Peck Reservoir for industrial use);
- authorize the DNRC to contract for the sale or transfer of water to persons for coal slurry purposes subject to approval by the Legislature;
- prohibit the marketing of water for coal slurry purposes until July 1, 1987 or until an environmental impact statement (EIS) has been completed on the proposed project;
- limit the term of contracts that provide for the sale or transfer of water by the DNRC for industrial purposes (including coal slurry), to a maximum of 40 years;
- amend the Major Facility Siting Act (MFSA) to include, under the definition of facility, pipelines capable of transporting water; and
- create a Water Resources Oversight Committee and assign it the task of studying, in cooperation with the DNRC , issues related to water development and conservation in the state. (The Legislative Council would provide staffing.)

(over)

HB 894
Marks

This bill would authorize the DNRC to acquire rights to appropriate a maximum of 50,000 acre feet of impounded water for the purpose of marketing same for industrial uses (including coal slurry). Specifically, the bill would:

- repeal an existing statutory definition that establishes coal slurry as a non-beneficial use of water;

- authorize the DNRC to acquire water from any federal reservoir for industrial uses (existing law allows only for such acquisition from Fort Peck Reservoir);

- authorize the DNRC to contract for the sale or transfer of water for beneficial uses (including coal slurry) subject to approval by the Board of Natural Resources and Conservation;

- prohibit the use of water for coal slurry purposes unless the water is classified as "low-quality" or unless it is shown that the use of "low-quality" water is not economically feasible;

- limit the term of contracts that provide for the sale or transfer of water rights by the DNRC, to a maximum of 40 years;

- amend the MFSA to include, under the definition of facility, pipelines costing more than $10 and that are capable of transporting coal slurry; and

- create a Water Resources Oversight Committee and assign it the task of studying, in cooperation with the DNRC, water marketing and water development in the state. (The Legislative Council would provide staffing.)

HB 908
Harper

This bill would:

- amend the MFSA to include, under the definition of facility, pipelines greater than 20 inches in diameter and 30 miles in length that are capable of transporting water;

- amend portions of the Water Use Act pertaining to criteria for issuance of water appropriation permits by the DNRC; and

- create a Select Committee on Water Marketing and assign it the task of studying issues related to the marketing of the state's water. (The Environmental Quality Council would provide staffing.)

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

BILL HB 908 DATE 3/16/83

SPONSOR REP. HARPER

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Cathy Campbell	Helena	MT. Assn. of Churches	X	
Robert Baker	Havre	Self	✓	
Betty Scollard	Bozeman	Self	X	
Jim Scollard	"	"	X	
Regina Lindig	"	Farmer	X	
Erma Lindig	"	Farmer	X	
Mary Murphy	✓	Hyalite Farmers Union	X	
Stanley Smith	Bozeman	Gal Co. F. U.	X	
Margaret Smith	"	"	X	
Herb Mobley	Ashland	Tongue River		X
W.F. Murphy	Three Forks	Hyalite Farmers Union	X	
Ed Kemmick	Bd Mt. W. & E.	Consultant		✓
Ward Shanks	Helena	North Tin Pigtail	AMEND	
Eliot Peterson	Columbus, Mont.	Stillwater County Water Users	X	
James T Mular	Butte	Rail Unions		X
M. W Gullickson	Livingston MT.	United Transportation Union		X
K. J. Arthun	Absarokee MT	Stillwater Water Users Assn	✓	
R H Ellis	Helena	Mont. Water Users		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33
1 83

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

BILL HB 908 DATE 3/16/83

SPONSOR REP. HARPER

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Willa Hill	1502 Peosta-Helena	League of Women Voters	X	
Arlen Plowman	Bozeman	Cement Wkrs 239		X
Wyatt L Frost	Bozeman	Cement Wkrs 239		X
Larry Dodge	Helmville	self	X	
Susan Cunningham	Helena	MEIC	X	
Don Skaar	Bozeman	Sierra Club	X	
[redacted]	[redacted]	[redacted]		[redacted]
Mr & Mrs Carlin	Helena	self	X	
Grace Edwards	Billings	NPRC	X	
[illegible]	Helena	Mt. Trade Assn		✓
Tom Hoy	Mola.	MEIC	✓	
Margaret MacDonald	Billings	NPRC	✓	
Doni Kelley	Deer Lodge	"	✓	
Walter Archer	Olive	NPRC	✓	
K. M. Kellogg	Billings	Mont. Water Devel. Assn		X
Art Kruger	Bozeman	self	✓	
Don Snow	Stevensville	self & Mont State Log Board	✓	
C. H. Burr Jr	Hamp. Mt.			X
Jerry Minow	Boulder	self	X	
Paul Smith	Boulder	self	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

Exhibit 10

FACT SHEET ON HOUSE BILL 908, PREPARED BY REP. HAL HARPER

House Bill 908 is a middle of the road approach to the water marketing issue. It would do four things:

1.) Place major water and slurry pipelines under the provisions of the Major Facility Siting Act;

2.) Allow the state to acquire water from any federal reservoir for industrial use;

3.) Repeal the current statute that requires the legislature to approve an appropriation for the out-of-state use of water and replace it with a provision requiring legislative approval of all large appropriations, both instate and out-of-state; and

4.) Create a select committee of the legislature to conduct a comprehensive study of the advantages and disadvantages of water marketing.

Sections 1 - 6 (up to the bottom of page 15):

This part of the bill would place water and slurry pipelines greater than 20 inches in diameter and 30 miles in length under the Major Facility Siting Act.

Section 7:

Allows the state to acquire water by purchase option or agreement with the federal government from any federal reservoir for the purpose of sale, rent or distribution for industrial use. The existing law allows the state to acquire water from Fort Peck only.

Section 8:

Provides that the Department of Natural Resources and Conservation may not issue a permit for an appropriation of 10,000 or more acre-feet of water a year or 15 CFS unless:

1.) The Department finds that:

a.) the normal criteria for the issuance of a permit have been met;

b.) the applicant proves that the rights of a prior appropriator will not be adversely affected; and

c.) the proposed appropriation is in the public interest; and

2.) The legislature affirms the findings of the Department.

In determining if the appropriation is in the public interest, the Department will consider:

> Existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes...the benefits to the applicant and the state;...the economic feasibility of the project;...the effects on the quantity, quality, and potability of water of existing beneficial uses in the source of supply;...the effects on private property rights by any creation of or contribution to saline seep; and...the probable significant adverse environmental impacts of the proposed use of water...
> Sections (i) - (vi)

Section 9:

Repeals the prohibition on export without legislative approval.

Section 10:

Establishes a Select Committee on Water Marketing consisting of eight members chosen on a bipartisan basis with equal numbers from the Senate and the House. The Select Committee will undertake a comprehensive study of the economic, tax, administrative, legal, social and environmental advantages and disadvantages of water marketing from existing and proposed reservoirs with reservations.

Section 11:

Appropriates $80,000 for the study of water marketing.

DR:wf

(Taken from the tape of the March 16, 1983 hearing.)

MIKE MELOY:

My comments will be mostly devoted to the legal question associated with all three of the bills discussed at some lengths by previous witnesses.

The issue being discussed tonight is whether the state of Montana should get into the business of interstate marketing of water. That is the issue. Probably the most significant issue the legislature will face in terms of its long-term impact. I find it ironic and I can't resist making this comment. One of the sponsors to get the state into the business of marketing water lectured me at some length in 1975. Rep. Marks opposed a little bill that I had put in asking or proposing that the state get into the business of marketing electricity. He reminded me of the postal service and of how difficult it has always been for state government or federal government to do anything in the business of business. I would suggest to Rep. Marks that that was a persuasive argument then and probably is today. The preponderance of the bill to get the state into the business of marketing water essentially argues that we should do this for two reasons: 1) they tell us that the state of South Dakota has made a killing by selling water and there is a market for water in Montana and we should take advantage of it financially; 2) they tell us that our statutes which place severe restrictions on large quantities of water being exported period, as well as export for slurry of coal, are in constitutional trouble, and should someone challenge those statutes we would probably lose, and then we wouldn't have any protections and those people interested in using the water will be able to take it and not pay Montana any money for it.

First, with respect to the first argument that the state of South Dakota is selling water so we should also do that. You should know that the state of South Dakota is involved in a lawsuit right now brought by some railroad companies and some other folks as well as three downstream states, Missouri, Nebraska and Iowa. And in that lawsuit the plaintiffs are raising substantial constitutional issues with respect to South Dakota's right to do what they did. There is no clear constitutional basis then for the kind of water marketing proposed in the first two bills.

Secondly, with respect to whether our statutes presently dealing with marketing of water are constitutional, we have two statutes that are being essentially repealed by these bills and they should be considered separately. They were enacted separately. They operate and deal with two separate issues.

The first says you cannot use water to slurry coal, it is not a beneficial use. The second statute says you can't export large quantities of water from the state of Montana without first getting permission from the legislature. Apparently someone is concerned that recent decisions by the Supreme Court have caused those two statutes to be in constitutional trouble. The case they are relying on is the case of Sporhase v. Nebraska. In the Sporhase case the statute in Nebraska said we will not permit water to be diverted and transported out of our state unless 1) the transport can be done and not violate any conservation purposes or interests of the state and Nebraska; and 2) it can only be done to those states that agree to send water back to us. That is called a reciprocity clause. When the case got to the US Supreme Court, the Supreme Court said 1) ground water (in the Sporhase case they were dealing with ground water which is entirely different from surface water, the distinction was not raised in that case but I feel, nevertheless, exists) is an article of interstate commerce. Therefore a state may not infringe on the transport of that water impermissively without violating the commerce laws unless Congress says they can; or 2) have a purpose in prohibiting that transfer which is constitutionally permissible. The problem in Nebraska was that they had a reciprocity clause. Reciprocity clauses have always been met with successful counterclause challenges. The Montana slurry ban does not have a reciprocity clause. It does not distinguish between states which might give water back to us. Therefore, the Sporhase decision in that regard would not affect the Montana slurry ban in any respect. Further, the court said clearly we think the reason given by Nebraska for restricting water, conservation purpose, is a permissible purpose constitutionally and if they did not have the reciprocity clause in there we would find the statute to be constitutional. It so happens that Montana's slurry ban has very clear language in it that the reason we have the ban is strictly related to conservation of water in an arid state like Montana. Therefore, Sporhase doesn't suggest our slurry ban is unconstitutional, rather it could be used to support the constitutionality of our ban because the Supreme Court said that reason, conservation, is a legitimate reason for interfering with interstate commerce.

The second statute, that is the one that says no large amount of water goes out of the state without legislative permission, no water can be diverted out of the state. That statute is very similar to the one that the US Supreme Court rendered unconstitutional in the case of Altus v. Carr. The reason it is unconstitutional is that the language isn't related to conservation purposes and it does not distinguish between and there seems to be a flat restriction on out of state appropriations and it does not apply these restrictions to any size of appropriation to be used in state. In my

opinion, the export ban needs some work. But you don't have to go into the water marketing business to fix the statute.

The Supreme Court has told you how to do that. The amendment to the export ban contained in 908 which says that no use of large quantities of water whether in state or out of state can be made without legislative approval. The appropriation made needs to be consistent with conservation purposes and there is a whole list of fairly stringent criteria all related to conservation purposes. I think that HB 908 does an excellent job of rendering as far as we can the export ban constitutional.

Now, the point I am making, the question of permitting the state to get into the water marketing business is a policy question and should be decided separately from the threat that there is something wrong with our statutes. That decision is a significant decision. Its enactment repeals a policy which this state has had since 1973 which said that we are going to be extremely careful with water appropriations, and appropriations of water to be diverted from the state of Montana.

You are considering three bills. I disagree with Mr. Doney that there is very little difference between the two. Rep. Marks' bill repeals the slurry ban, says you can use water for slurrying coal, and it also does not require an applicant to go to the state to get a permit to use water to slurry coal. Therefore, I would ask Rep. Marks - Why would an appropriator go to the state? Why wouldn't he just go ahead and apply for the permit himself? The other bill, Rep. Neuman's, seems to be suffering from internal hemorraging as it just can't seem to decide whether it wants to be for a slurry ban or against it. It strikes the section which says you can't use water for slurrying coal and replaces it with language that says maybe it is not a very good idea. That - coupled with the fact that it essentially requires everyone to go to the state to get water for large diversions has its own little set of constitutional problems in terms of the equal protection clause, and I am not sure you will really solve anything if you are concerned about the constitutionality of whatever statute we have.

In any event, again, the question should be viewed on its merits and there are too many questions left unanswered for this session to enact a bill which gets the state into the business of marketing water.

First, what is surplus water? what is surplus water in the spring may not be surplus water in the fall. The definition also requires that water only be taken from a place of impoundment. Does that impoundment - is it necessary for the impoundment to store water that exceeds the normal instream flow. That is a significant question that needs to be answered.

Do we want to permit interbasin transfers of water? Do we want to send our water to Arkansas? Do we want to send the water out of the basins that it presently flows out of into another basin? What implications do the actions of the state of Montana and South Dakota have on congressional interference? One sale of water in South Dakota has caused Congress to introduce legislation to severely limit the present statute that has been on the books for awhile which permits the upstream states to use the water before it gets to the downstream states. I can tell you if we prompt that kind of congressional action, which I am sure the enactment of one of these bills will do, then Congress is going to be saying in order to protect all the downstream states we have to restrict what the upstream states can do, and they are able to do that under the Sporhase decision. The Supreme Court has said that water is a matter of interstate commerce.

What is the implication of adopting a bill like this on jobs? What kind of coal markets are available right now considering the apparent decrease in demand for coal? and what is the impact on railroad jobs? I don't think we need to wait for somebody to apply for that water to make those kinds of examinations. What are the effects on the future sources of future potential appropriations of water? If we send the water out of state now, how does that effect the ability to irrigate land for subsequent appropriations? Rep. Marks seems to think we can use the money to build dams and thus improve that. We really don't know that. Any water that is taken out on a permanent basis is going to effect that many subsequent appropriations. What happens if the coal market falls further and there is no demand? Suppose an appropriation and a permit is issued to the person who wants to slurry coal but there is no market for the coal and so therefore there is no money coming in to pay for the maintenance of the water projects built with the money. What happens in that event?

Those are the kinds of questions that HB 908 is asking and it seems to me that is the kind of questions that even the most conservative of you would want to know before you vote yes on 893 and 894.

Exhibit 12

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January 26, 1983

Senator Chet Blaylock
Senate Minority Leader
Capitol Station
Helena, Montana 59620

Hal Harper, Chairman
Committee on Natural Resources
House of Representatives
Capital Station
Helena, Montana 59620

Dear Sirs:

You have asked for my opinion relative to the constitutionality of Section 85-2-104, MCA, providing that utilizing water to slurry coal is not a beneficial use in light of the recent U.S. Supreme Court decision in Sporhase v. Nebraska.

My associate Sharon Morrison and I have reviewed the decision as well as the lower Federal Court ruling in Altus v. Carr and El Paso v. Reynolds from the standpoint of the Montana coal slurry statute. Our opinion is that the Sporhase decision is clearly distinguishable and does not render Section 85-2-104 constitutionally infirm.

Sporhase involved a Nebraska statute which prohibited transfer of Nebraska ground water to another state unless the law of the receiving state permitted acquisition of water by Nebraska.

Reciprocal provisions have been consistently viewed by the federal courts as unconstitutional burdens on interstate commerce. Although the Court in Sporhase devoted some time to an analysis of the basis for the prohibition i.e. whether a state could regulate transfers and, if so, upon what basis, the decision clearly turned on the reciprocity provision. Since the Montana statute does not contain a reciprocity provision the Sporhase decision would not serve as a basis for attacking the Montana statute. Furthermore, Nebraska did not prohibit intrastate sale of water but only interstate sale to non-reciprocating states. The Montana statute applies to both inter and intrastate use of water to transport slurry.

On the other hand, Sporhase may lend some judicial credence to the Montana statute. The Court in Sporhase did not rule on the legality of a total prohibition of non-Nebraskan use of ground water, but left it to the Nebraska courts to decide whether the reciprocity clause was severable and, if so, to sever it. Thus, the Court was implying that the prohibition without the reciprocity provision was constitutionally acceptable so long as it was reasonably related to vital state interests. The significant aspect of Sporhase for the states is the Supreme Court's recognition that conservation of a vital state resource meets the "strict scrutiny" test by which discriminatory state laws must stand or fail.

In that regard, there has been some discussion of legislative attendance to Section 85-2-104, to "strenghten" or "remedy' the prohibition so that it will withstand a constitutional challenge. The Department of Natural Resources has written a bill to eliminate the provision and authorize state marketing of water apparently upon the theory that the slurry ban is in danger. As you may recall, the section in question has already received remedial treatment. In 1979 the statute was amended to add the legislative findings that "slurry transport of coal is detrimental to the conservation and protection of the water resources of the state." If the Legislature had read Sporhase and used it as a basis for the amendment it would have done no differently. In our opinion, the law is as strong as it can be to withstand a constitutional challenge. In fact, it may be argued that since the legislative declaration of purpose preceeded Sporhase it cannot be viewed as an attempt by the state to render an unconstitional statute valid to meet the conservation purpose requirement of Sporhase.

It would be risky, in our opinion to add language to the declaration of purpose clause at this point in time. Such action would most certainly be viewed as a concession that the statute was in trouble constitutionally and remedial action would obviously be window dressing.

We have also reviewed the recent Federal District Court decision in El Paso v. Reynolds which declared an absolute ban on export of state ground water to be unconstitutional. First, the statute is distinguishable from ours because it deals with ground water. Second, our statute is not an absolute ban on export of water. Rather, it is a determination that a particular use of water for both intra as well as interstate appropriations is not beneficial. Finally, the ruling is not consistent with the Supreme court ruling in Sporhase which suggests that "bans" are constitutional if preserving a vital state interest. Thus, the ruling would not be expected to withstand a reviewing Court's scrutiny within the parameters of Sporhase.

One significant message comes from our analysis. It is not necessary to deal with the slurry prohibition as part of or the rationale behind a water marketing bill. The legislature may wish to authorize the state's engaging in the selling of water; but it is not necessary to repeal Section 85-2-104, MCA, in doing so. In our view, the statute is eminenently supportable in view of Sporhase.

If we can be of further assistance in amplifying upon any of these matters, please don't hesitate to call on us.

Sincerely,

PETER MICHAEL MELOY

PMM/tws

Exhibit 13

(Taken from the tape of the March 16, 1983 hearing.)

PAUL SMITH:

Mr. Chairman, members of the committee, friends. I am appearing here tonight in my own interests. I am a practicing lawyer and sometime practicing rancher from Boulder. The other night when I was down in the calving shed practicing the latter, I was reading an article from the newspaper and it was proclaiming all the great things that 893 and 894 was going to do for the state of Montana. As I read that I glanced up on the top of the page and noticed the day was March 15 and I remembered the old saying of "Beware of the Ides of March." Now the people that are talking "to go" --I do not like to take a direct analogy to Brutus but they are friends of Montana and they have Montana concerns at heart.

But I think the problem here just like the problem with Brutus and Caeser is that there is a rush to judgment. Sponsors of 893 and 894 have a fear that somehow we are wasting the waters of Montana and if we don't act now they will be forever lost. Brutus and the other people on the staff obviously had a fear that Caeser would grab too much power and if they did not act immediately the empire would be forever destroyed. I think we have to take a look at that. Do we have to make a rush to judgment? Is this issue so simple that we can jump right into it right now and have all the problems resolved. I think this must have been said already regarding the constitutional fracas and the legislation that might be pending and impending in the United States Congress and the problem that South Dakota is facing in the courts because of their sale of water, but it is not something that we should think we can resolve by making a fast, quick bill that will attempt to get the process moving and perhaps solve some problems but create bigger ones. When they stuck the dagger into Caeser, perhaps they didn't think he would bleed to death. When they stick the dagger into Montana's water law, perhaps you think not all the water is going to run out. There are some real problems when we begin doing that.

I would like to address some of the problems I see in HB 893. To begin with the first section, there are a number of policy statements that usually proceed most major legislation. In this instance, however, they actually become a public interest criteria to deny or grant appropriations of water in excess of 3,000 acre feet per year. The problem with that is that they are broad general statements, but yet I do not believe the best Philadelphia lawyer can put a handle on what has to be done to establish some of those policy statement requirements.

Paragraph 10 in section 11 states that the marketing of water from storage facilities by this state is consistent with sound water conservation and development, if water rights are adequately protected and existing water rights provided for.

As you already heard, currently we are going through an adjudication of water rights. We do not know what the water rights are going to be. Seems immature to me, at least, to jump in and say we know we have at least some, and we know that coal slurry pipeline companies are going to jump in without knowing if they will be able to buy something that is going to last. And therefore, it seems very inconsistent to say that we are protecting our existing water rights when we don't even know what they are yet. On the other hand coal slurry pipeline companies are not going to jump in and try to get a permit if they don't know if they will be sound a few years down the road.

At the present time there is only one stream where the water rights have been determined and that is in the Yellowstone River.

The second major problem that I see is in Section 3, paragraph 2. There it states that the department carries the burden of proof to find that there is need to conserve and preserve water for the health, welfare and safety of the citizens. Under the present water laws as far as meeting the criteria the applicant has to carry the burden of proof. Here the burden of proof is being placed on the DNRC. Secondly, I feel there is a real conflict here regarding when the department applies for an appropriation. Are they going to sit in judgment on their own appropriation or application for a permit. That is not addressed here and is a definite conflict of interest.

We have heard a lot about all the money that might be made by the state of Montana for future water projects and whatever. I think we have to look closely at how the mechanism is supposedly going to work. On page 17, section 10, and page 10, section 5 are the two sections. The first deals with the applicant and the second with the department and how each applies for a permit. Now the one in section 10 is the regular applicant. Now, I can see no reason, as Mike Meloy pointed out, why a person would ever have to go to the state - go simply the direct permit route. If they can get a permit why would they have to buy from the state. The other scenario is the state is going to say "OK we are going to deny your permit." and turn around and apply for it themselves. That seems to be some of the thinking. If they do that, of course, there is a real legal protection argument. How can they deny the coal slurry company and say they don't meet the criteria and say the state meets it on their own. I think that is a problem that has to be addressed. HB 894 has the same problem on section 13, page 22, for the pipeline applicant and section 5, page 11, for the department applicant.

On page 16, section 8, there is a criteria set out as far as how the state will acquire water from the federal reservoir. At the end of that it says the department is not required to construct any diversion or appropriation facility and may sell, rent or distribute such water at such rate and under such terms and conditions as it considers appropriate. Again, there is another problem there. Does that mean they have a complete license to do whatever they want as far as federal water is concerned? They do not have to follow the EIS or the MFSA or the other provisions or restrictions placed on an average for nonfederal water. Again, there is a problem that is not resolved in the legislation.

I would like to draw your attention to a couple of other major problems. One in what I call the rush to judgment on water problems in the concept of sale of water is that there is absolutely no address in these bills as to condemnation of property. Under Montana law water use is recognized as a public use and recognizing the public use means that in the court cases that held this, you can use the power of eminent domain to condemn property. In other words, if a company who were to apply a water right approved by the department, would have the right of condemnation across the state of Montana to take it where they see fit. These bills do not address that problem.

There has obviously been a real honest and hearty attempt to face all problems in 893 and 894 but they fall way short of the scenario. For instance, it says the only thing we are going to tap are the reservoirs and not get into underground water or surface water. That sounds good in the bill, but the problem was brought out by Mr. Doney himself, almost any law will fall restricting the sale of out of state water. Now the Sporhase case dealt strictly with underground water and in that case the Supreme Court said you could not restrict underground water because of the fact it is an interstate commerce. But they did not make a distinction that sure you can say a certain thing on surface water and another thing on ponded water and another thing on ground water. Another problem I have found in being involved in some water laws is that underground water is interconnected with surface water.

Parallel on Brutus and Caeser being the day before St. Patrick's Day, I would like to recite to you a paraphrase of a Skakespearan play that was given to me by . . . (unclear). This is a eulogy given once the pipelines are in place through 893 or 894 and not 908, which I wholeheartedly support.

(He read the poem.)

Ex. 13A

Eulogy on Montana Water

Friends, Montanans, legislators, lend me your ears.
I come to bury Montana's waters, not to slurry them.
The evil that States do live after them
The good is oft interred with their coal.
So let it be with Montana's waters. The noble sponsors of SB3 & SB4
hath told you that Montana's waters were being wasted.
If it were so, it was a grievous fault,
And grievously hath Montana answered it.
Here, under leave of the sponsors and the rest-
For the sponsors are honorable men-
So are they all, all honorable men-
Come I to speak at Montana's waters funeral.
Montana's waters were our friend, faithful and just to us.
But the Sponsors say they were being wasted,
And the Sponsors are honorable men.
The waters had nursed our crops, filled our stock,
and provided homes for our waterfowl and fish.
Whose profits did the general coffers fill.
Were it these our waters being wasted?
When snowfall was light, our streams withered and
fish and crops died.
Waste of water should be made of sterner stuff.
Yet the Sponsors say the waters were being wasted,
And the Sponsors are honorable men.
I, also did see the multiple benefits of free flowing
streams-irrigation, fisheries, recreation and unparalleled beauty.
Was this wasteful?
Yet the Sponsors say the waters were being wasted,
And sure they are honorable men.
I speak not to disprove what the Sponsors spoke,
But here I am to speak what I do know.
I, also did love the flowing streams once, not without cause.
What cause withholds you then to mourn for them.
O legislation, thou are fled to slurried beasts,
And Men hath lost their reason! Bear with me.
My heart is in the pipeline there with Montana waters,
And I must pause till it come back to me.

Exhibit 14

(Taken from the tape of the March 16, 1983 hearing.)

SHARON MORRISON:

In this troubled economic times we are desperately looking for ways to finance. The programs for "Save Montana" must perpetuate. We must not look to our most valuable resource, water, in a helter-skelter fashion without carefully planning out the use of that water and the consequences on the future.

In 1972 it was recognized by this legislature that water was our most valuable resource and you set about preparing a plan by which we could set about discovering what our resources were and what the claims against the resource were. That plan has not yet come to fruition and will not come to fruition before you pass on these bills. It is my thinking that when the claims program is completed you will find that an inordinate amount of the waters that go through the state of Montana is already claimed, and then we are going to be left with a demand on the water that is needed for farming and for the positional reclamation projects that we have always recognized in the arid west.

I would just say from a legal standpoint that the coal slurry bill that was passed last legislature is most certainly one that will pass constitutional muster. Therefore, you have to decide whether you do in fact want to have coal slurry be a part of the use of Montana water.

It seems to me in listening to the remarks made by the various people that what we have are questions, and HB 908 says lets take a couple of years and let's look at those questions. Let's look at whether or not a state can legally sell surface water. That question has never been decided. All of the questions that have been cited by the courts have been to ground water which has had the incidence of ownership of being part of the land. Let's consider the question of the ecological effect of out of basin transfers of water. In times when we have inordinate demands upon the waters used in the state, we have to remember that in the ecological cycle waters used for irrigation and on-site use would then return to ground water and recharge the ground water level. We are using our ground water in excess of recharge in a number of areas. Coal slurry would add to that problem and probably reduce the ground water well below the recharge rate.

If we even consider the effect of interstate allocation of water sources which I am certain will take place. If Montana allocates water for coal slurry, that water will be part of the allocation that will go to Montana in an energy allocation of water in the case where each state gets a quantity of water. Montana has simply bottled up the water because we are fortunate that it was stored here. The down-stream states have a right to it and they can exercise that right in courts of law. We must remember that.

Finally, I must say we have a mandate under the 1972 Act to act carefully, and to wait an additional two years should not be too much to ask in view of the careful planning that has taken

Exhibit 15

SOME THOUGHTS ON MONTANA WATER LEGISLATION, 1983

by DOROTHY BRADLEY

85-1-121 provides that only with legislative permission can water be controlled within Montana for use outside the state.

85-2-104(2) provides that the use of water for slurry transport of coal is not a beneficial use.

The recent U. S. Supreme Court decision in Sporhase v. Nebraska suggests that these statutes might violate the U. S. Constitution's interstate commerce provisions. The Montana Legislature has three choices.

First, it can take a wait-and-see attitude. There may be no challenge to the statutes, and there may be no constitutional problems. However, this is unlikely.

Second, it could dramatically change our state policy by repealing the slurry statute, thereby creating a slurry option. (The Legislature would still have to approve export of water for out-of-state slurry use. However, if intrastate slurry was promoted and interstate slurry was prohibited, constitutional problems would almost assuredly arise.)

Third, the Legislature could take steps to continue present policy by strengthening the statutes to bring them in line with Sporhase dicta. (More detailed language could be added to the existing language clearly relating the slurry prohibition and legislative review to the need to conserve a scarce resource.)

I believe Montana will gain the most by taking the third choice. A comprehensive legislative study should precede any changes in present policy. Sporhase makes it clear that some state restrictions on water exports can be justified. With additional language, Montana's slurry provision could probably withstand a court challenge.

Key considerations include the following:

(1) Most slurry pipelines in the country are in some form of stagnation. Two of the five partners of ETSI want out. ARCO expressed hope to have sold its 25 percent share prior to the end of 1982, and failed. This appears to be a bad time to contemplate commitments of water to a financially questionable industry.

(2) A hasty move to put large quantities of water into a previously prohibited beneficial use may well compel downstream states and interests

to sue, as Missouri did following the South Dakota-ETSI sale. It would be preferable to have these issues deliberated and settled by state legislatures rather than in court.

(3) Sizable water sales and numerous lawsuits could spur Congress to pass slurry iminent domain legislation, or to attempt comprehensive resolution of the Sporhase issues. Sporhase clarified Congress' ability to do this, within limits. While Congressional action may ultimately be appropriate, it should only be undertaken after consultation and agreement with concerned states. Montana should avoid agitating downstream states which could pressure Congress to act rapidly and unilaterally.

(4) Simply repealing the slurry statute would leave Montana wide open for slurry pipelines. Such action would create a strong temptation to sell the maximum amount of water to the highest bidder. Before such a temptation is created, a number of questions should be asked and answered. Do we have enough water? How much will be left for other uses -- especially in a dry year? Can we withhold slurry water in a drought without violating interstate commerce requirements? What is the fair value of the water? Who will benefit from funds created by slurry sales?

For the last 10 years Montanans have been nearly unanimous in their agreement that water intensive methods of transporting coal have no priority among our many water needs. Montanans deserve a thorough, careful public debate before that policy is changed. But information has not previously been available, and, to date, discussion has been largely out of the public eye. The coal slurry question is too serious to be resolved hastily.

Exhibit 16 b

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LINDA SMELHAMER

March 1, 1983

TO ALL CONCERNED:

Re: United States and Indian Tribes v. The State of Montana and Thousands of Individual Montana Residents, Concerning Water Rights

We are now advised that the above-captioned water litigation in which you are interested is now set for argument before the Supreme Court of the United States on Wednesday, March 23, 1983. The court combined the argument involving Indian water rights in the State of Arizona, as well as those within Montana.

Mike Greely, Attorney General for Montana, will be arguing on behalf of all the Montana defendants. We do not yet know who will argue on behalf of Arizona.

The time allotted by the Supreme Court for argument is really rather short, and it would be foolish for any other counsel to try to intrude upon the limited time that Mike Greely will have.

Accordingly, we shall not incur the expense of a trip to Washington to simply sit and listen to the arguments.

We shall, of course, advise you promptly of what the decision of the Supreme Court of the United States may be. It normally takes the court at least three months in which to arrive at a published decision.

Best personal regards,

Cale Crowley

CALE CROWLEY

CC:11

FOR YOUR EDIFICATION

By the Treaty of Sept. 17, 1851, a reservation was established for the Blackfeet Tribe of Inidans encompassing land which is now known as the Blackfeet Indian Reservation.

1. Stat 675, Executive order
2. Aug. 19, 1874
3. Executive order, April 13, 1875
4. Act of Congress, April 15, 1874
5. Act of Congress, May 1, 1888. Stat. 354, 1895
6. When the reservation was formed in 1851, the Indians had rights to all water necessary for the present and future needs of the Indians.
7. Also, the Sioux and Assinibone of the Fort Peck Reservation; the Gross Ventre at Fort Belknap and Rocky Boy reservations have similar water rights under those treaties.

John

Exhibit 17a

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

440 ROOSEVELT DRIVE K-1

AFL-CIO—CLC

Union bug removed for duplicating

JAMES T. MULAR
State Director
[redacted]
Butte MT 59701
Phone 406 494 2316

BEFORE
THE COMMITTEE ON NATURAL RESOURCES
MONTANA HOUSE OF REPRESENTATIVES
16 March 1983

STATEMENT OF JAMES T. MULAR, STATE LEGISLATIVE DIRECTOR, BROTHERHOOD OF RAILWAY & AIRLINE CLERKS, REPRESENTING THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, UNITED TRANSPORTATION UNION, AND 17 OTHER STANDARD RAIL LABOR ORGANIZATIONS COMPRISING THE RAILWAY LABOR EXECUTIVE ASSOCIATION. (RLEA)

Mr. Chairman, members of the Committee. For the record, my name is James T. Mular. My address is 440 Roosevelt Drive, Butte, Montana. I am appearing on behalf of the above cited organizations. We oppose all three Bills, House Bill 893, House Bill 894, and House Bill 908. The first two Bills are designed to slaughter railroad jobs in Montana, while House Bill 908 merely opens the door for future coal slurry pipelines. Even though it retains the present ban on coal slurry, I am submitting 20 petitions from hundreds of communities in Montana, opposing any out of state sale of water.

The Congressional Office of Technology Assessment, and the vast weight of Congressional testimony before committees prove:

NO NEED SHOWN FOR COAL SLURRY PIPELINES:

All present and future coal transport requirements can be readily handled by existing modes of transportation.

NO SAVINGS TO CONSUMERS CLAIMED:

The ultimate consumer of coal is the user of electric power, and viewed from strictly an economic aspect (without regard for "regulatory distortions and social impacts") pipelines MAY, depending upon certain circumstances, be less costly than railroads in transport of coal. But any such savings realized thereby, would go to coal mine operators and the electric utilities with no indication of the amount of savings, if any, which might be passed through to the consumer of electricity.

FORECLOSURE OF OTHER FUTURE USES OF REMAINING WESTERN WATER SUPPLIES:

"Pipeline proposals present a choice between slurry and other forms of future water use which may be more or less desirable," (Congressional Office Technology Assessment OTA testimony, page 4), especially once the state of Montana gets into water marketing contracts. Slurry pipeline entities would have senior rights to Montana's agricultural development of water, because of the full faith and credit clause of the U. S. Constitution.

CONTAMINATED WASTE WATER MUST BE DISPOSED OF:

In Arkansas alone, over 2 billion gallons of contaminated waste water would be discharged into streams, or held in specially constructed reservoirs. Ground water pollution resulting from saline seepage and air pollution, resulting from evaporation are very serious and present very great risks.

RAILROADS WOULD CLOSE BUSINESSES AT A TIME WHEN CONGRESS IS SPENDING MILLIONS TO SAVE RURAL BRANCH LINES:

Future rail expansion would be impeded. OTA estimates between 1985 and 2000, some 12,000 to 18,000 railroad jobs would be lost, while 12,800 individual persons would be unemployed.

In Montana there are approximately 6,000 railroad employees. Over 1,400 are presently unemployed, due to economic conditions. Coal slurry lines would reduce unit train movements drastically, affecting over 600 employees to begin with. It would result in an additional 10% reduction within a five year period when the pipeline goes into service, which would amount to over 22 million dollars lost to Montana's economy.

JOBS INCREASED BY PIPELINE CONSTRUCTION WOULD BE TEMPORARY, WHILE JOBS INCREASED BY RAIL TRANSPORT WOULD BE PERMANENT (AS COAL PRODUCTION INCREASES):

The coal production would contribute continually to the economy of communities where they live in Montana.

I served during the 1977 Legislature. As a member of the Judiciary Sub-Committee on Water, Representative Scully and myself introduced House Bill 797. This legislation addressed any surplus waters that Montana may have. The Bill provided a minimum reservation or appropriation of 4 acre feet per year on all state lands held in trust. Any marketing would be directed to future agricultural expansion, and domestic in-state use.

At a time when this state is looking for revenues for our University and School Foundation, we feel that House Bill 908 should be amended to conform to the 1977 legislation, found in MCA, Section 85-2-316. Revenues derived from this program would certainly enhance future funding for our schools, not to mention the economic gains realized by agriculture.

Moreover we would submit to the Committee that House Bill 908 be amended to ensure effective utilization of state lands in trust to obtain funds for education by reserving limited amounts of water necessary for their continued development and appropriating funding for these purposes.

It is only appropriate that we get the most royalty for our water used within the borders of the state. In other words, use it or lose it!

In conclusion, I am submitting separate documents to the Secretary of the Committee, which address the following problems:

1. Environmental problems resulting from emergency shutdown of coal slurry pipelines.

2. Association of American Railroads questions and answers about coal slurry pipelines.

3. Technical feasibility of the proposed Energy Transportation Systems Inc. (ETSI) in reference to well field, Niobara County, Wyoming. That study concluded that the Madison Acquifer underlying the ETSI unit, west of the Old Woman Anticline, was infeasible as designed and located.

4. Our organization (BRAC) attached a fact sheet addressed to Congress and the states, regarding Coal Slurry Pipeline Issues and supportive facts.

5. And the final text of Senator Max Baucus' opposition to National Coal Slurry Legislation.

I am sorry that we were not able to reproduce these documents for each Committee member.

Another matter regarding the current Congressional Legislation contained in House Resolution 1207 by Congressman Regula of Ohio addresses the problems arising from the Sporehase and New Mexico water cases.

Mr. Chairman, members of the Committee, we hope that you will consider the merits of our testimony, and also our offered amendments, during your executive deliberations on House Bill 893, House Bill 894 and House Bill 908.

Thank you.

_____

JAMES T. MULAR

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I

98TH CONGRESS
1ST SESSION

H. R. 1207

To authorize the States to regulate the interstate transfer of water to insure that Federal regulation pursuant to the commerce clause does not impair or impede the efforts of the States to protect and control this resource.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1983

Mr. REGULA introduced the following bill; which was referred jointly to the Committees on Interior and Insular Affairs and Public Works and Transportation

---

A BILL

To authorize the States to regulate the interstate transfer of water to insure that Federal regulation pursuant to the commerce clause does not impair or impede the efforts of the States to protect and control this resource.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for purposes of this Act, the term "water" means surface or ground water located in and belonging to the States.

SEC. 2. The regulation of the interstate transfer of water shall be subject to the laws of the several States which relate to the regulation of the interstate transfer of water.

SEC. 3. No Act of Congress pursuant to the commerce clause of the United States Constitution shall be construed to invalidate, impair, or supersede any law enacted by any State for the purposes of regulating the interstate transfer of water.

○

ENVIRONMENTAL PROBLEMS RESULTING FROM EMERGENCY SHUTDOWN OF COAL SLURRY PIPELINE

When coal slurry pipelines are shutdown to deal with occasional emergency situations, provision must be made to deal with the settling of the coal out of the water which, if allowed to occur, will block the line. The powdered coal, under such situations, will settle within about 36 hours.

The Energy Transportation Systems, Incorporated (ETSI) proposed pipeline from Wyoming to Arkansas is engineered to permit the emptying of the pipeline into dump ponds in the event of an emergency. The water component of the slurry is then allowed to evaporate or percolate into the groundwater. No provision has been made to prevent the resulting coal dust from being blown about the territory.

It is estimated that the settling basins or dump ponds (located at the pumping stations) for the ETSI pipeline will be no less than 3,660,000 cubic feet, or the equivalent of seven football fields ten feet deep.

Each pumping station must also have access to large reservoirs of water to flush the segments of the pipeline before settling occurs in the event of a shutdown. These reservoirs must each have a capacity of about 2-1/2 million cubic feet or 18,700,000 gallons. (The pumping of underground water at the needed volume and speed offers problems which may be insoluble.) In the cold, arid country of the proposed route, the reservoirs will be difficult to maintain.

Both the emptying of the pipeline into dump ponds and the maintenance of large reservoirs present critical environmental problems which have not been adequately considered.

Association of American Railroads
July 3, 1975

ASSOCIATION OF AMERICAN RAILROADS

SOME QUESTIONS AND ANSWERS ABOUT COAL SLURRY PIPELINES

1. Why should not railroads have competition in handling coal if the consumer will benefit?

The kind of "competition" coal slurry pipeline operators propose is unfair competition. Pipeline operators want to compete only for the "cream" of the coal traffic leaving to railroads and others the entire responsibility for handling the remainder. Pipeline operators want to compete, substantially free of government regulation, against railroads regulated (by both federal and state laws and agencies) in virtually every aspect of their operations.

Further, the claims of pipeline operators as to the economic advantage to consumers are greatly exaggerated. And if railroads do not haul coal (because it is moved in a pipeline), the very same consumers are going to pay more for the cost of the transportation of everything else they buy that continues to move by railroad. That includes bread, made from grain moved by rail; fruit and vegetables, moved by rail; household appliances, moved by rail; and almost everything else the same consumers buy.

2. Why should not coal slurry pipelines have federal eminent domain power which railroads and other pipelines have?

Railroads do not now have federal eminent domain power. Neither do most other kinds of pipelines. But the real point is that coal slurry pipelines will not be true common carriers required by law to provide service to the public. They will instead be private operators providing what is essentially a private service to a very few, very large coal producers and coal consumers. The right to condemn your property or mine should not be given such private operators; and coal slurry proponents oppose legislation that gives them eminent domain power coupled with provisions making them become true, full regulated common carriers.

3. Why should not the Department of Interior regulate federal eminent power for coal slurry pipelines?

Transportation of coal, however done, is still transportation. How it shall be done is a transportation issue; and any decisions made about it affect the National Transportation Policy. The Department of Interior has never had any experience in administering the National Transportation Policy. On the other hand, the Interstate Commerce Commission has 85 years of experience in that field. Moreover, the bills proposed by coal slurry proponents would impose different ground rules than those applicable to railroads and other true

common carriers. It is entirely obvious that complete regulation of railroads and other common carriers, under one set of ground rules, by one experienced regulatory agency, with substantially no regulation of coal pipelines, under a different set of ground rules, by an agency with no transportation experience or expertise, cannot produce consistent application of the National Transportation Policy. Fair and consistent application of the Policy is the lifeblood of our entire public transportation systems and our entire economy depends on those public systems.

4. Can railroads handle all future coal movements or will we have another "grain car problem"?

No one can be sure just how great the increase in coal traffic will turn out to be. Some estimates are too high to be realistic. However, to the extent and for the future time period that reasonable estimates may be made, the railroads are confident they can and will be able to handle the traffic efficiently unless coal slurry operators are helped by federal laws to skim the cream of the coal traffic and thereby destroy the ability of the railroads to obtain and make the capital investment in cars and other equipment needed.

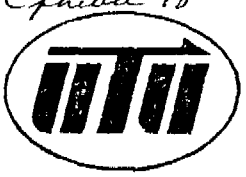
There are important differences between rail transportation of grain and rail transportation of coal. The first is very seasonal. It is also heavily affected by the availability of space in grain elevators or ships which reduce the efficiency of use of cars. Coal traffic to power generating plants does not fluctuate heavily by seasons and is not greatly affected by lack of a place to put the product at destination. Railroad investment in cars needed for increased coal traffic is economically practical and will be made if the traffic can be counted on to be available to the railroads.

5. In light of the tremendous deferred maintenance in the railroad industry, how can we be sure the railroads can do the job?

The real reason for the deferred maintenance on some railroads is that they have not had the revenues and return on investment which permitted expenditures for proper maintenance. Those railroads with adequate revenues are quite well maintained. Fortunately most major western railroads operating where increased coal mining will occur are in reasonably good condition. Expectable increases in coal traffic revenues should help all railroads to improve maintenance of their operating plants. With those revenues, they should and will be able to do the job. Without them, many would not be able to maintain their properties in condition to handle what other traffic pipelines cannot transport. The real issue is not whether deferred maintenance will prevent railroads from handling coal - it is, instead, whether railroads will be permitted to obtain the increased coal traffic necessary to preserve their ability to handle all the traffic for which the nation needs them.

Exhibit 18

transportation



MONTANA STATE LEGISLATIVE BOARD

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Chairman

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Vice Chairman

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Secretary

J. W. BRAND
State Director

~~XXXXXXXXX~~
Asst State Director
R. West

Testimony of Morris Gullickson on House Bills 893, 894, and 908, before the House Committee on Natural Resources, March 16, 1983

I am Morris Gullickson, legislative representative for United Transportation Union, AFL-CIO. We oppose House Bills 893, 894, and 908.

We are against these bills because selling water poses a serious threat to railroad workers' jobs and to one of Montana's most valuable resources.

We do not believe coal slurry pipelines are necessary, and we are gravely concerned about the jobs which would be lost as the result of their construction. For every one job created by a pipeline, railroads lose six jobs. That has an adverse impact on workers, on mainstreet merchants and the tax bases of state and local government. Our state cannot afford higher unemployment, more business bankruptcies and lower revenues for governments.

The United Transportation Union and the Montana State AFL-CIO have a long-standing position against coal slurry pipelines, adopted in convention action. The United Transportation Union submitted the following resolution to the 1978 Montana State AFL-CIO annual convention, and the convention voted concurrence. The resolution reads:

"WHEREAS, legislation now pending in Congress and before the legislatures of several states would permit and encourage the construction of coal slurry pipelines from Montana, Wyoming and the Dakotas; and

WHEREAS, water for use in the said slurry lines would be produced from the Madison Formation in Wyoming extending into southeastern Montana and the Dakotas and also from reservoirs, rivers and streams in these states; and

WHEREAS, it should be the policy of the United States government and the states to promote and encourage the beneficial use and development of all water for the preservation of agriculture, domestic use and industry in the state wherein the water is found.

RESOLVED, that the Montana AFL-CIO opposes any legislation aimed at utilizing water from any source for the transportation of coal to other states; and

IT IS FURTHER RESOLVED, that the Montana AFL-CIO encourages the national AFL-CIO to support this resolution; and

BE IT FURTHER RESOLVED, that the member states in this region be informed of this action, as well as the Montana Congressional Committee."

Please vote against House Bills 893, 894 and 908. Thank you.

Exhibit 19

UNITED CEMENT, LIME AND GYPSUM WORKERS
LOCAL UNION NO. 239 AFL-CIO
THREE FORKS, MONTANA

Wyatt Frost
NAME OF WRITER
Box 804
ADDRESS
Three Forks, Mt. 59752
CITY, STATE AND ZIP

TESTIMONY OF WYATT FROST BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURSES --MARCH 16, 1983

Mr. Chairman, members of the committee, I am Wyatt Frost and I am here representing Cement Workers Local 239, Three Forks.

We are here in opposition to House Bills 893, 894 and 908.

Most of our members use streams and rivers for recreation. Many of us have close family and neighborhood ties to agriculture.

Montana is more than a place on the map, it is a way of life. Water is very important to life in Montana.

Montana's water is too precious to sell. Water is vital to our state's prime industries, agriculture and tourism.

Shipping coal by train helps to keep railroad transportation available to Montana's farmers and industries.

The Montana Legislature has a history and tradition opposing coal slurry pipelines and selling Montana's precious water out of state. We see no reason to change.

THANK YOU

Wyatt Frost

Exhibit 20

TO: REP. HAL HARPER, CHAIR, & MEMBERS
HOUSE NATURAL RESOURCES COMMITTEE

March 16, 1983 13

RE: HB 893 and HB 894, TO MARKET
MONTANA WATER THROUGH DNRC

The thrust of House bills 893 and 894 is found in amendments to MCA Sections 85-1-101, which sets state policy to protect Montana's waters, 85-1-121, which prohibits out-of-state water sales, and 85-1-204, which defines DNRC's powers over state waters.

Basically, policy is amended so that marketing water can be included as a beneficial, protective, conservation use; sales prohibitions are lifted with DNRC approval; and DNRC is given out-of-state water marketing authority.

The questions are numerous--but a few important ones might be (1) Do we really want the state to have water rights and exclusive out-of-state marketing authority? (2) What environmental consequences could we expect if 893/4 were passed? (3) Are the problems we're told would be solved by passage of these bills really so crucial and immediate? and (4) would passage of bills of this sort alleviate whatever problems may exist as efficiently and fairly as some other alternative? In no particular order, I'll try to address these questions.

Recent court rulings have held that state interference with interstate water sales, as currently provided in Section 85-1-121, is illegal because it acts as a barrier to interstate commerce. It fails to provide a "due process" mechanism for obtaining permission to market water. Add to this a desperate search for revenue by state government, and the old excuse that "everyone else is doing it", and we have a recipe for damming, piping, and pumping our water resources somewhere before someone else does--reminiscent of the "kill it to save it" logic that worked such wonders in Viet Nam.

Experiences in other states should give us considerable cause for pause. Once water resources are politicized, the door to special-interest control is opened. Both of these bills give tremendous power over Montana's water to DNRC and, after the Water Rights Act and its implications for defining

surpluses, I am duly suspicious already of our own state's motives.

Environmentally, these bills will provide for state seizure of land for storage of water for sale, jeopardizing what few free-flowing waters we still have, in the name of "protection". DNRC could also give permits for needed accesses and conveyances--which means trespassing and rights-of-way for pipelines and powerlines, again in the name of safeguarding our water.

On at least these two counts--political and environmental impacts--the bills would probably cause as many problems as they could ever solve. Is there a way to protect our resources without taking such risks? I think so--and in presenting an alternative I hope also to deflate arguments for hurrying into state control and state marketing.

Starting with MCA Section 85-1-101, a fundamental change in state "policy considerations" would help immensely: Instead of making water use, storage, conservation, and now marketing a state responsibility, complete with a "state water plan", Montana could go the opposite direction and limit its role as a state to keeping records of claims and protecting the rights of private users. This could well include a commitment to defend those claims against all comers, including federal or other out-of-state planners. The original purpose of government in America was to protect individual rights, and such a function should be perfectly appropriate here.

Section 85-1-204, which already spells out (and through either of these bills would enormously expand) DNRC's control over Montana water, could be eliminated altogether--since with the policy just mentioned, the state would exert no control at all over water use, and would have no need for powers of condemnation to facilitate water projects. Section 85-1-121, the legally weak prohibition against out-of-state water sales, could likewise be deleted.

Now, what I've just outlined are the conditions necessary for what I see as the only real long-range solution to problems of water use and allocation: a free market in water. In a free market, all water rights are

privately held and completely transferrable. They are established by means of prior appropriation--which means whoever mixes his/her labor with it first--and may be recorded with or without benefit of a central state agency. Whatever organization records the water rights can charge for services, much like a copyright or title recording operation.

Conflicting claims, damage actions, and other problems can be handled by court action on a case-by-case basis, obviating any need for water legislation or planning. No one wields the power of eminent domain, and no one operates in terms of such abusable concepts as the "public interest." And no problems of "due process" can arise in a free market, either, since any private developer who could assemble or purchase all the necessary water rights, equipment and facilities, and rights of way in a free market would have the right to do so--no matter where the destination of the water might be.

True, the odds of anyone being able to accomplish all that would be slim, but for precisely that reason, all worries about conserving or allocating water for future generations, the efficiency and impacts and appropriateness of current allocations, etc., would be minimized by the natural workings of supply, demand, and price in a free market. Meanwhile, Montana's constitutional mandate for a clean and healthful environment, including water quality, would be handled by litigation, in either public or private courts.

A free market would also spell doom for water politics. Private interests would have to make ends meet without subsidy or powers of condemantion granted them "in the public interest", and the state itself would not be in the water business, either.

None of this would stop the federal government from using its power of eminent domain, of course--but then, neither will HB 893 or 894. But a state which commits itself to protection of individual water rights, instead of to bureaucratic control, is taking a stand which the federal government would be obliged to respect, first because doing so is as constitutionally correct as

the prohibition against interference with interstate commerce, second because state defense of individual rights would obviously enjoy popular support among those affected. State policies of control over water are routinely overridden by federal courts, so a policy of protecting private rights would hardly seem riskier. And besides, if such a policy were to prove satisfactory, it could mean that Montana, instead of following other states down the path to ruin over water issues, could provide an inspiring model for them to copy.

Larry Dodge

Larry Dodge
Box 60, Helmville
Montana 59843

Exhibit 21

14

TO: REP. HAL HARPER, CHAIR, & MEMBERS
HOUSE NATURAL RESOURCES COMMITTEE

RE: HB 893 AND 894, TO MARKET MONTANA WATER THROUGH DNRC

One of the assumptions underlying HB 893 and 894 is that the state would make money selling water, so that a variety of public programs and projects now in financial jeopardy could perhaps be funded without more taxation.

I think that assumption is faulty, because it will cost a bundle to keep water from flowing out of state, in terms of constructing facilities to store it and ship it, the bureaucracy it will take to administer stockpiling and selling it, and the land and property taxes lost to rights-of-way.

Even if selling water eventually were to pay for all of the above, profits are a long way down the road.

Meanwhile, since DNRC would end up acting "in the public interest", there is even reason to expect that water projects and slurries might be given access to underpriced electricity for pumping purposes, with all other ratepayers stuck with the rest of the bill--kind of like the way BPA handles its marketing.

In California, for example, urban water users have ended up paying heavy property taxes, exhorbitant water bills, and high administrative costs, all to subsidize incredibly wasteful usage by corporate agribusiness interests. This has been accomplished in just 24 years, since the passage of the Burns-Porter Act, authorizing state water projects.

Montana can do better. Montana can resolve to maintain maximum separation of water and state, and to engage in ruthless pursuit of state spending cuts instead of such dangerous, counterproductive revenue-raising efforts as the politicization and sales of our water.

Sincerely, Mary B. Hamilton

Mary B. Hamilton
Box 50, Helmville
Montana 59843
March 16, 1983

Exhibit 22

15

Montana
Farmers Union

PRESIDENT

Terry Murphy
917 C 2nd Street, S.W.
Great Falls, Montana 59404
452-3286

VICE PRESIDENT

Arthur Buen
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Nashua, Montana 59248
785-4131

SECRETARY-TREASURER

Chris Johansen
200 13th Avenue South, Unit 12
Great Falls, Montana 59405
452-8323

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[illegible]ey, Montana 59270
798-3506

Kenneth Siroky
Roy, Montana 59471
464-5691

James Stephens
415 Wilda Lane
Bozeman, Montana 59715
587-5643 or 587-5241

TESTIMONY OF TERRY MURPHY, PRESIDENT OF MONTANA FARMERS UNION
ON HOUSE BILLS 893 & 894

Mr. Chairman and Committee members:
MY NAME IS TERRY MURPHY. I SPEAK AS PRESIDENT OF MONTANA FARMERS UNION, A STATEWIDE FARM ORGANIZATION OF 6,300 FAMILIES. BY A SPLIT VOTE OF OUR EXECUTIVE BOARD WE SPEAK AS PROPONENTS OF HOUSE BILL 893. "SPLIT VOTE" INDICATES THE ANGUISH ALL MONTANA WATER USERS FEEL AT FACING THIS SUBJECT. OUR MEMBERSHIP IS ALSO SPLIT ON THE ISSUE, BUT THE MAJORITY OF THE BOARD AND MYSELF, FEEL THE ISSUE MUST BE FACED AT THIS TIME.

THE ISSUE OF WATER BEING USED FOR ENERGY INDUSTRIAL USE HAS BEEN KEPT ON THE BACK BURNER IN MONTANA FOR A LONG TIME. THE STATE OF SOUTH DAKOTA PLUS RECENT FEDERAL COURT RULINGS HAVE MOVED IT TO THE FRONT BURNER IN SPITE OF THE DREAD MANY MONTANANS FEEL. I FEEL CONFIDENT THAT THE BEST LONG TERM INTERESTS OF THE MAJORITY OF FARMERS UNION MEMBERS WILL BE SERVED BY GETTING STARTED LAYING THE GROUNDWORK, LEGALLY, FOR MEETING FUTURE WATER DEMANDS ON MOMTANAS RESOURCES IN A WAY THAT DEFINITELY PROTECTS OUR PRESENTLY RECOGNIZED USERS PLUS ALLOWING STATE GOVERNMENT FLEXIBILITY IN FURTHER DEVELOPING AND APPORTIONING THE USE OF THESE PRECIOUS WATERS.

THE "USE IT OR LOSE IT" DOCTRINE IS STILL IN EFFECT. WE ARE MAKING GOOD PROGRESS IN RECORDING AND ADJUDICATING OUR IN-STATE USES. BUT, WE MUST NOT TRY TO HOLD BACK FOREVER, OR SOMEONE IS SURE TO PROVE A NEED, FOR THE GOOD OF HUMAN BEINGS THAT WILL TAKE AWAY SOME, OR ALL, OF OUR CONTROL.

A STUDY IS PROVIDED FOR IN THE BILL, AND THAT IS GOOD. MOVEMENT IS ALSO NEEDED. NEW WATER PROJECTS ARE SORELY NEEDED IN MONTANA AND THE BILL PROVIDES POTENTIAL FUNDING THAT WE DON'T PRESENTLY HAVE. WATER IS LIQUID GOLD. WE HAVE LOTS OF IT. I BELIEVE WE SHOULD WORK WITH STATE GOVERNMENT TO MAINTAIN THE MAXIMUM CONTROL CONSISTENT WITH HUMAN NEED AND YET BE READY TO FACE FUTURE DEMANDS.

MY TESTIMONY IS IN NO WAY AN ENDORSEMENT OF EMINENT DOMAIN FOR COAL SLURRY PIPELINES. THAT IS NOT PART OF THIS BILL. BUT, WE ARE ENDORSING THE EFFORTS OF REPRESENTATIVES NEUMAN & JONES TO CREATE THIS SYSTEM OF LEGAL AND FINANCIAL OPTIONS FOR USE WHEN AND IF WE NEED THEM, AS I AM SURE WE WILL.

THANK YOU.

PETITION

Flathead County
H.D. # 15

The undersigned, concerned citizens of the State of Montana, petition the Legislature to oppose all legislation which would encourage development of coal slurry pipelines and sale of Montana's water for transport of coal. The effect of such legislation would be disasterous to the workers of the State of Montana, causing the loss of untold jobs for Railroad workers, service oriented jobs and wreak havoc on communities and families supported by these workers.

Does Montana want Bread Lines or Pipelines?

Vote "NO" for SLURRY.

Ted Hagens	126 Kalsel St Kalispell, MT
Roger A. Hagens	Box 795 Whitefish, MT.
C. K Bassett	160 Haskill Dr Whitefish MT
Allen Edwards	P.O. Box 1537 Whitefish, MT
Tony L. Johnson	P.O. Box 862 Whitefish, MT.
Bill Smith	839 8th E Whitefish Mont.
EH Johnson	115 Noll Haven Dr Kalispell Mont.
MARVIN JOHNSON	P.O BOX 1438 WHITEFISH, MT 59937
Harry C. Maeder	1006 Parkview Ave Whitefish MT 59937
Jerry A Schooley	P.O. Box 127 Whitefish, MT 59937
J. C. Nelson	939 KALISPELL AVE. WHITEFISH, MT 59937
Leslie E. Gunderson	P.O. Box 907 Whitefish, Mont.
Thomas L. Barranger	334 Deer Trail Whitefish
Larry Long	74 Sussex Dr Kalispell MT
Ernest Connelly J.	Box 2141 Whitefish, Mont
Jimmy K. Pettit	Box 952 Whitefish Mont 59937
Antoinette Wagner	Box 795 Whitefish, MT. 59937
David W. J. Blount	415 W 5th St Whitefish, MT.
Dean E. Brown	2129 Hwy 93 No. P.O. Box Whitefish MT 59937
Margaret L. Johnson	100 E Lake Whitefish

Called to my office
Ex 23. Rep Connelly
Vol. 10, 15.

The undersigned, concerned citizens of the State of Montana, petition the Legislature to oppose all legislation which would encourage development of coal slurry pipelines and sale of Montana's water for transport of coal. The effect of such legislation would be disasterous to the workers of the State of Montana, causing the loss of untold jobs for Railroad workers, service oriented jobs and wreak havoc on communities and families supported by these workers.

Does Montana want Bread Lines or Pipelines?

Vote "NO" for SLURRY.

Martin Kastella	301 Wisconsin Ave Whitefish MT 59937
Michael J Higgins	235 Boat Ave Whitefish Montana 59937
Richard Strickland	1530 2nd St Whitefish Montana
Janet K Martinson	
Valerie A. Wagner	254 Columbia Ave Whitefish MT 59937
Mark C Wagner	Box 10 Whitefish MT 59937
Catherine Wagner	312 Broadway Hall, Ugtfish, Montana MT 59937
[illegible]	232 W 2nd Whitefish, MT 59937
Janice Hall	Box 1529 Whitefish, MT. 59937
Janet M Maddux	1004 Baker Ave Whitefish MT.
Charles J Garwood	2786 Pine Dawn Whitefish, MT 59937
Carl Pitzer	330 Dakota Ave Whitefish, MT 59937
Terrie Baksick	223 Columbia Ave Whitefish
Patty Van Alstine	228 W. 4th St. Whitefish, MT 59937
Kathy McGuire	315 Kalispell Ave Whitefish, MT 59937
[illegible]	125 Whitefish Lk Rd Kalispell MT 59901
Jim Hagath	230 Hanson Ave Whitefish 59937
Irma Stafford	1033-1st St Whitefish, MT 59937
Margaret Brown	20 Washington Ave Whitefish MT
Benilda Delgado	822 Park Ave Whitefish, MT 59937

Exhibit 24

(Taken from the tape of the March 16, 1983 hearing.)

REPRESENTATIVE DAN KEMMIS:

I appreciate the opportunity to speak. I apologize for having arrived late. Maybe I will address some of what has been said before but will try to avoid that.

I have had a long-standing interest in the issue of water. In particular a long-standing interest in the Montana coal slurry ban. As some of you know I worked in the 1979 session and introduced a bill to strengthen the coal slurry ban to overcome some of the constitutional difficulties that existed. Early in the session I was seriously considering establishing a water marketing bill that would establish a water marketing system, but the closer I got to it and the more I looked at it the more totally convinced I became that we were not in a position at this time to put in place a water marketing system and do it safely. It is out of that conviction that I speak to you this evening. You know by now that we have in Montana two bans that are at issue here. One is the export ban and the other is the slurry ban.

I absolutely concur that there are serious flaws in the export ban. There are. They are the same types of flaws that existed in the slurry ban in 1979. The court case most directly applicable, as far as I'm concerned, to the export ban is the case of Altus v. Karr. That was the case that concerned both me and other people in 1979. I want to make sure you understand what that difficulty is. It is easy to get led off in the wrong direction. What was wrong under Altras v. Karr - what was wrong with the slurry ban - what is wrong now with the export ban is that that export ban flatly discriminates against interstate commerce. It treats the export of water in a different way than it treats the intrastate movement of water. That is discrimination against interstate commerce and it is forbidden under the United States Constitution. What HB 908 does is remove the problem with the export ban. The way it does this is to say any large appropriation or large diversion of water would be treated in the same way whether used interstate or intrastate and it puts them all under exactly the same heading. In that way you get away from the problem of Altras v. Karr. Whatever we do here we ought to address ourselves to the problem of the export ban.

The problem with the slurry ban is different. The problem with the slurry ban doesn't have anything to do with discrimination against interstate commerce. We corrected that problem in 1979. The way the ban used to be you couldn't slurry coal across the Montana border. In 1979 we changed that to say you can't slurry water period. That removed the difficulty with interstate commerce discrimination. I still have some concern about the slurry ban based in particular on the Sporhas decision and the District Court decision in New Mexico. I am concerned about the Sporhas decision but there is a whole lot of difference between concern and panic. I characterize more what we are being asked to do here as panic more than honest concern.

I am convinced that under the two bills being discussed here, if you think we have difficulties with the slurry ban now with Sporhas, the difficulties would be many times as great under those two bills as under the current law. We need to look at problems that the slurry ban may have under Sporhas. Take our time about addressing and address them properly. I am convinced we cannot do that this session. We have not got a good session and we will not be able to do it.

893 and 894 - we would be in worse shape if we passed them then if we stayed where we are. The biggest flaw is that both of these bills try to do (good faith effort, good idea) is try to guarantee that som- energy company won't come simply in and appropriate a large amount of Montana's water and use it for slurry purposes. How do you guarantee that they won't do that. How do you guarantee that instead of appropriating they buy the water from the state of Montana. There's a neat little trick in both bills. What it does is if you come in as an energy company to appropriate the water you won't get it because you are not going to meet the public interest criteria. But lo and behold! The state of Montana, coming in with exactly the same appropriation, gets the appropriation and sells the water. I would like each of you to be in the position of a federal judge. This is a rare opportunity. I'm going to be a lawyer for an energy company. My client has applied for 50,000 acre feet of Montana water for a permit to appropriate that water. We want to use it for coal slurry. We want to slurry the coal to Oklahoma. The DNRC denies the permit. The DNRC says we don't meet the public interest criteria. The DNRC files an application for the same amount of water. The Board of Natural Resources found they did meet the public interest criteria. They meet the public interest critera because the state of Montana was going to make a whole lot of money if they got the permit, otherwise it would just be the company making a whole lot of money. Let me read from Sporhas "For commerce clause purposes we have long recognized the difference between economic protectionism on one hand and health and safety regulations on the other." Sporhas recognizes the legitimacy of states protecting their water in a large variety of ways except in one case and that is if it is pure, raw economic protection. That is exactly and precisely what is at stake under 893 and 894. It is only because of economic protectionism that the state of Montana would be able to force applicants out of the appropriation stream and into the marketing stream. That is the only way those bills work. So the lawyer before the federal judge is going to say "My client has been denied equal protection of the law. Not just by chance as it was written into the law that we would be denied equal protection." Now I ask you to think about whether under Sporhas, is better where it is now or better with a bill that is structured to discriminate against one applicant in favor of the state of Montana.

What we have here is simply this. We have what I think are sincere efforts to do something about a possible problem. But they are not workable efforts. They are in the long run seriously wrong, much more seriously wrong than what we have now. And that is simply the result of too much haste. We just cannot in the course of a few weeks address this serious problem. We can't do it. We can do it I'm convinced if we give ourselves time to do it properly. What it calls for here is cool heads. This problem is too important to rush into. We need cool heads. I have had I don't know how many calls from the state of Wyoming, from legislative leadership there asking me what is Montana going to do. We keep hearing that Montana is going to rush into this. And the argument is being made here that if Montana is going to do it, we have to do it. This kind of pellmell competition among upper basin states is deadly. We must not be talked into it. If the lower basin states sees this happening then the threat to the 1944 Flood Protection Act is going to be a grave one. We cannot allow ourselves to get sucked into competition with the upper basin states in such a way that we precipitate a water war along the length of the Missouri. And that is what we are being asked to do here. I am appealing to the cool heads of the committee not to let that happen. I am appealing to you in a bipartisan manner because it will take bipartisan opposition to stop this from happening. Now I know that I am appealing to the minority members and have put you in a difficult position as it is not easy to oppose the minority leader. In fact there was a time when I would have said that noone should every oppose the minority leader. I would say that if I can oppose the governor, you can oppose the minority leader and this is the time to do it.

Exhibit 25.

March 16, 1983

HOUSE NATURAL RESOURSES COMMITTEE:
REP. HAL HARPER, CHAIRMAN.

Mr. Chairman and Members of the comittee, I am Vernon Westlake representing the Gallatin County Agricultural Preservation Association, the Park County Legislative Association, and ~~the Sweetgrass County Preservation Association~~ T.E.P.A.

For the record, our groups oppose House Bills 893 and 894 and are here to-night requesting this 48th Legislature to not at this time enact legislation authorizing the Stateof Montana to appropriate water for out-of-state sale and to authorize Coal Slurry to be designated a beneficial use of water.

The membership in our groups feel that enacting legislation giving the State this authority is premature. One member in our group remarked the Montana would be getting the cart in front of the horse and opening the gate so the horse could get out, leaving the people with only a cart. Our concern is, the " Water Adjudication Process " must be completed first. If this is not done, many questions will arise, for instance, how much water does Montana have to sell, how much water is needed for existing claims, how much water might be available for future in-state needs and development, how much water will be needed to satisfy the Indian claims, and there are still other questions to be answered.

We are not saying that at a point in time, Montana should not consider appropriating water for sale, both for in-state and for out-of-state, we believe this might have future possibilities. There are some positive things in the bills that we want to submit for your consideration. We recommend the 48th Legislature establish a "Water Oversight Committee" and you authorize this committee to

develop a water marketing plan including necessary statutory changes, consideration of future needs and development. Namely, domestic, agricultural, industrial, recreational, instream flow, in-state and out-of-statewater sale. The plan must definitely stipulate that it be reviewed and approved by the Legislature and only after the conclusion of the "Water Adjudication Process" could Montana appropriate water for sale, again only with Legislative approval.

I want to conclud by urging this committee and the entire Legislative Body, do not panic, do not rush the people of Montana into a situation that could have a drastic effect on the future in-state water needs and development by opening the gate before a long range water marketing plan is developed and before the "Water Adjudication Process" has been completed.

Thank-You

Vernon L. Westlake

Vernon L. Westlake
3186 Love Lane
Bozeman, Montana 59715

Exhibit 26

Montana Senior Citizens Assn., Inc.

WITH AFFILIATED CHAPTERS THROUGHOUT THE STATE

P.O. BOX 423 - HELENA, MONTANA 59624

(406) 443-5341

16 March 1983

TESTIMONY OF BOB VIRTS, PRESIDENT OF THE HELENA CHAPTER OF THE MONTANA SENIOR CITIZENS ASSOCIATION, IN OPPOSITION TO HOUSE BILLS 893 AND 894.

Mr. Chairman and Members of the Committee,

For the record, my name is Bob Virts. I'm from Helena and I represent the Montana Senior Citizens Association. Our association is opposed to HB 893 and HB 894.

We feel the sale of Montana water and the construction of coal-slurry pipe lines will have a serious and detrimental effect on the railroad employment and on the future of the retired railroad employees. Nationwide, railroad employment has fallen from 500,000 to 400,000 in the last year and a half. It is projected that the building of coal-slurry pipe lines will create the loss of between 16,000 and 41,600 railroad jobs between now and the year 2000, depending on the number of coal-slurry pipe lines built. It is estimated that the Railroad Retirement fund will be facing a $532 million deficit by the end of 1984. Our economy can't stand the continual loss of jobs.

Coal slurry proponents launch bold, new attack

Coal slurries — a proposal that could have disastrous consequences for the rail industry, rail employees and their retirement system — is again before Congress.

And the proponents of coal slurries — entrepreneurs that would skim the cream of rail hauls regardless of its effect on the nation's rail system or the environment — have come out with guns blazing, hoping for a quick victory after being beaten back year after year.

The threat is serious and immediate, assures Jim Snyder, UTU national legislative director and chairman of the RLEA Legislative Committee.

Snyder is urging members to begin a letter-writing campaign against coal slurries "NOW!"

Two coal slurry bills have been introduced — S. 267 by Sen. J. Bennett Johnston (D-La.) and 11 cosponsors, and H.R. 1010, by Cong. Morris K. Udall (D-Ariz.) and 28 cosponsors. The legislation would empower the Secretary of Interior to grant a right-of-way over Federal lands.

To underscore the urgency of Snyder's appeal for letters, hearings on S. 267 were scheduled for Feb. 15-16 and Feb. 23-24 before Insular Affairs Committee on Mar. 2.

To insure quick movement of the coal slurry proposal, sponsors of the bill have inserted a provision that would require the House Public Works and Transportation Committee to act within 30 days after the Interior panel files its report in the House.

Rail labor's opposition to coal slurry pipelines — which would carry pulverized coal mixed with water — has centered on the potential loss of railroad jobs, the effects the jobs loss would have on the Railroad Retirement System and the harm that would come to the nation's rail system through diversion of coal traffic.

It is estimated that 16,000 railroad jobs would be lost by the year 2000 if five of the pipelines being considered were built. If all 13 coal slurry pipelines on the drawing boards were built, it would result in a direct loss of 41,600 railroad jobs by the year 2000.

Members are urged to write to their congressmen and senators in opposition to H.R. 1010 and S. 267. Do it NOW!

Exhibit 27

December 13, 1980

Mr. Rick Bondy
Department of Natural Resources
32 S. Ewing
Helena, Montana 59601

Dear Rick:

The Board of Directors of Tongue River Water Users Association met on December 10, 1980 and the following is our Position Statement:

1. Number One priority is to preserve and continue use of water as at present which includes flood control as well as irrigation.

2. Should the legislature acknowledge the need for 400,000 cfs outflow capacity, these are our recommendations: Our preference is to Enlarge Existing Reservoir and to increase capacity to 130,000 AF. storage.

3. If at all possible, more irrigation water should be furnished the Tongue River Water Users Association for sale to agriculture.

4. If industrial water use is considered, we prefer a coal slurry pipe line versus a mine mouth generating plant or synthetic fuel plants.

5. Any industrial user should return water to agriculture upon completion of project.

6. A water storage plan using coal mine pit operations adjacent to the present reservoir should be placed into effect to increase storage. Reclamation law would have to be changed to accomplish above.

Sincerely,

TONGUE RIVER WATER USERS ASS'N

Herb Mobley
President

HM:b

Re Confirmed by Unanimous Vote by TRWUA Directors March, 83

Exhibit 28

Willa Hall
League of Women Voters of Montana

House Natural Resource Committee hearing
March 16, 1983

HB 908, HB 893 and HB 894

We support HB 908 and oppose HB 893 and HB 894. The League, like the state of Montana, currently has a position opposing coal slurry. We arrived at this position after a two year energy study acknowledging that water was the key factor in energy production. Both to conserve water and in opposition to energy conversion plants, our position states a preference of coal transportation by railroad rather than by slurry. We may be reviewing this position during the coming year, but if we do it will be a thorough study of the issues surrounding water marketing and coal slurry. HB 893 and HB 894 both establish the procedure for marketing water and then requests the Department of Natural Resource to study the marketing issue. This isn't exactly putting the cart before the horse, it's more like the cart and horse are going down the road side-by-side. Will you be able to get the horse before the cart at the end of the road? If you are convinced that slurry and water marketing is the direction for Montana to proceed, then there is no point in a study. If you are not certain, then a study should proceed any drafting of a water marketing plan.

If, as often stated, "our natural resources are a major industry and income to the state", then marketing water may be a viable use of this resource. Montana does have the right to use some of the water that presently flows out of our eastern borders and water that is stored in reservoirs, and industry is entitled to a portion. However, water marketing and coal slurry are very complex issues and many questions need to be answered. Considering the recent

Federal Court cases, will the removal of our slurry ban improve Montana's position to control the amount of water exported or will we simply lose the right to determine the use of Montana water? How would this decision effect our relationship with downstream basin states? The differences among the basin states should be resolved among the states themselves, avoiding litigation or congressional action if possible. How will slurry fit into our State Water Plan? Our State Water Plan and Laws should reflect the needs and desires of the people of Montana, and should be in such order that, hopefully we will not be constantly reacting to other states and national decisions.

Again, addressing HB 908, we support adding water transportation pipelines to the Facility Siting Act. We also support setting criteria for issuing water permits from water reservoirs but have not had adequate time to properly review this section of the bill. We support the study of water marketing as outlined. In addition to the study, we believe the state should develop an energy policy which would serve as a guideline for levels of coal production, coal conversion and coal transportation.

We urge your careful consideration of this very important issue. Thank you for this opportunity to testify.

Ex. 29

(Taken from the tape of the March 16, 1983 hearing.)

BILL FOGARTY:

I would just like to set forth for you the recent recommendations of the Governor's Transportation Advisory Council pertaining to the bills being discussed here tonight. As you know in 1981 Governor Schwinden created by Executive Order the Governor's Transportation and Advisory Council. The council was composed of twenty members representing the grain shippers and producers, highway contractors, transportation unions, legislators, motor carriers, railroads, forest product industries, automobile association and the aviation industry. After doing extensive research and evaluation during a year long of deliberations they made these recommendations to the governor on transportation and energy issues. Recommendations were in the area of aviation, energy transportation, highways, bus and passenger transportation, motor carriers, railroads and . . (unclear).

The recommendation for entailing water pipelines are "Montana water is growing in importance as a production resource for all Montana agricultural industry. Decisions on future water appropriations should be made only after thorough analysis and public view. The committee recommends that the commitment of water for slurry pipelines should be judiciously and cautiously undertaken.

Recommendation #2: The council recommends the repeal of the prohibition of the use of state water for coal slurry pipelines, and in the place thereof provide for the prioritization of such use as subservient to agriculture and domestic consumption.

Recommendation #3: The council recommends the sale of state waters that are prioritized below domestic consumption that are available after requirements of downstream minimum flow are met. The council recognizes that the state's water like its timber and grains is a valuable renewable resource for which markets should be developed."

Exhibit 20

TESTIMONY IN OPPOSITION TO HB 893,894

TESTIMONY IN SUPPORT OF HB 908

DON SKAAR MONTANA CHAPTER SIERRA CLUB

My name is Don Skaar and I represent 1200 Sierra Club members in Montana. I am here to voice our opposition to House bills 893 and 894, and our support for House bill 908. With regard to bills 893 and 894, we oppose the provisions to market water from storage reservoirs and to remove the ban on coal slurry pipelines. We reject the argument that Montana must hastily enact legislation to permit the marketing of water on the grounds that, if Montana does not sell the water first, North or South Dakota will do so. This rush to sell water could have negative legal ramifications, as witnessed by South Dakota, which has already tried to sell its water and is now facing the ire of downstream states in the courts. Furthermore, the immediate benefits derived from revenues generated by a coal slurry pipeline may in the long run be dwarfed by the detrimental aspects of such action. Environmental, economic and land use issues need to be resolved before water is marketed for coal slurry. We also believe that the extent of potential environmental damage at upstream locations due to the marketing of water is currently unknown. There has never been an adequate study of the water needs of the various segments of the Missouri River basin, and to date, there has not been an adequate assessment of the available supply. The state's water adjudication program is many years from completion and we fail to understand how the DNRC and the sponsors of HB 893 and 894 can justify the assertion that there is a surplus that is available for sale. To proceed with such

precedent setting diversions of water before these relationships and consequences are fully understood would be both short-sighted and irresponsible.

However, we do support the provisions in bills 893 and 894 which set up a legislative oversight committee and a DNRC committee to look at the effects of water marketing on these various issues. But let these studies be done now, and at some later time consider the establishment of a water marketing plan.

We feel that the approach of House bill 908 to water marketing and coal slurry is much more appropriate. We support the main features of the bill, particularly those calling for:

1) the establishment of a legislative committee to look at the pros and cons of water marketing without providing provisions for selling water,
2) placing coal slurry under the Major Facilities Siting Act,
3) expanding the criteria the DNRC must consider before issuing a water use permit, and
4) making legislative approval necessay for all large appropriations.

To summarize, the use and allocation of water are very important issues and should not be used merely as expedients to raise revenues. A water policy driven by financial considerations is a dangerous one at best. Rather, priorities for water use should be established to protect basic human and environmental needs, and establishing such priorities will require thorough study of available supplies, needs to be met, and the complex consequences of various allocation decisions. As such, the Sierra Club urges a do pass for HB 908 and a do not pass for HB 893 and 894.

Exhibit 21

TESTIMONY OF

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT ADDING CERTAIN PIPELINES TO THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT; PROHIBITING THE ISSUANCE OF PERMITS FOR CERTAIN AMOUNTS OF WATER WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR A STUDY BY A SELECT COMMITTEE OF WATER MARKETING; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 75-20-104, 75-20-216, 75-20-218, 75-20-303, 75-20-304, 75-20-1202, 85-1-205, AND 85-2-311, MCA; REPEALING SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

House Bill 908 contains a number of provisions that the Department supports:

1. It attempts to cure the constitutionality problems in our water export statute.
2. It allows the Department to market water from federal and state reservoirs.
3. It places coal slurry pipelines within the MFSA.

However, it also includes items that do not encourage sound water management practices.

First, the bill provides for an interim water marketing study that would attempt to evaluate the following issues.

1. The economic, tax, administrative, legal, social, and environmental advantages and disadvantages of water marketing.

A generic study of these isssues will be, at best, disappointing. The effects that marketing of water will have on these concerns depends on geographic location of the project, size of the project, amount of water marketed, the water source, and other factors that define a specific water marketing proposal. On the other hand, HB 893 would provide for evaluation of each individual water marketing proposal before a gallon of water could be sold.

2. The present and future in-state demands for water for domestic, municipal, agricultural, industrial, recreational, in-stream flow, and other beneficial uses.

Again, a general study of these concerns will do nothing to resolve them. Specific studies of specific proposals are provided in HB 893 will provide answers to questions that must be answered before a project could receive approval.

3. How best to encourage a negotiated resolution of the conflicting demands of water users within the Missouri River basin and to discourage litigation and congressional action initiated by lower basin states.

The Department was instructed by the last legislature to study this issue. The result was a report that each legislator has received. The recommendations contained in

that report address precisely the interstate concern voiced in HB 908 and the Department is currently taking actions to resolve that concern.

4. The potential effects of a coal slurry pipeline on coal production and the economic and environmental effects of increased coal production.

It's impossible to assess the impacts of slurry pipelines or coal production without addressing specific proposals.

5. The effects of a coal slurry pipeline on the railroad industry and rail rates for noncoal shippers.

Without addressing the specific geographic location and financial arrangements associated with a slurry proposal these impacts cannot be meaningfully assessed.

6. The potential ecological effects of the installation and operation of coal slurry pipelines.

The generic ecological impacts of slurry pipelines have already been addressed; but only specific projects impacts are relevant in making decisions regarding slurry projects.

Second, the bill requires that all water right applications larger than 5,000 acre-feet or 7 cubic feet per second would go through a rigorous screening process by the department and would require approval by the legislature.

This provision would require that the Department, at a cost of about $100,000 per year to the general fund, evaluate an average of 50 water right applications for agricultural, municipal and small hydropower uses each year. Under HB 902 this evaluation would include the following factors:

1. the benefits to the applicant and the state;
2. the economic feasibility of the project;
3. the effects on the quantity, quality, and potability of water of existing beneficial uses in the source of supply;
4. the effects on private property rights by any creation of or contribution to saline seep; and
5. the environmental impacts of the proposed use of water.

The Department does not believe that government should be making these kinds of determinations on the many agricultural projects that would be included in this provision.

In addition, an average of 100 water development projects would be forced to wait up to 2 years between legislative sessions for approval before construction could begin.

Third, HB 908 does not cure the possible constitutional problem of our coal slurry ban.

Fourth, HB 908 would include irrigation projects, municipality water supply systems and sewege plants, and small hydropower projects under the MFSA if the associated pipelines are over 20" in diameter or greater than 30 miles in length. Such non-industrial projects should not be inlcuded in MFSA.

I would encourage the committee to consider the advantages of HB 893 in respect to controlling our water future.

Exhibit 32

WIFE Women Involved In Farm Economics

NAME JO BRUNNER BILL NO. HB 893/984

ADDRESS 563 3rd ST HELENA DATE March 16

REPRESENT WOMEN INVOLVED IN FARM ECONOMICS

SUPPORT OPPOSE AMEND

COMMENTS:

Mr. Chairman, the Women Involved in FarmEConomics organization has a policy within our organization opposing the sale and slurry of Montana water, other than our own needs and while we realize that the time is upon us that we must reconsider our position, we are unable to do so with out due process.

We have, however, studied and discussed the bills Rep. Marks and Neuman propose here tonight and wish to express our views, approval of, or concern with, portions of those bills.

Overall, we find ourselves more in agreement with Representative Neumans bill. We are concerned however with the dilimna we find the state in where the adjudication process is concerned and we would suggest that early monies derived from any sale of water in the future might fund the completion of the process, as stated in Rep. Marks bill, realizing that any sale would be several years down the road and that certain limitations should be placed on such expenditures. WE BELEIVE THAT THE ADJUDICATION PROCESS MUST BE COMPLETED!!

It is our concern that in the years to come, agriculture might be expected to compete with other industry for our water needs andwe realize that it is an impossibility for agriculture, in our state, to pay several hundred dollars per acre ft for water.

We would expect that any sale contracts would take the water priorities already recognized within Montana into consideration and that any legislation written would emphatically proclaim it so, such as these bills do, We recognize the necessity of a thorough study of the sales of our water, but we do not beleive that we can go on studying and studying. As water chairman for our National organization I have ceased to be surprised by the plans for the water running out of Montana and the attitude that if it is running out, unused, we have more than enough, and we are wasting it. And in the back of my mind, I keep remembering the

"Hell has no fury like a woman scorned"

WIFE Women Involved In Farm Economics

HB 893/894

the plan the New Mexico women tell us thier congressional delegation has had drafted that will show that New Mexico can grow more food per acre than Montana can, and thus should have the water needed for that production.

We believe that consideration of any sale of stored water should be for a length of time conducive to bringing such contracts into being--we recognize that industry will not invest without adequate protection for their investments.We believe that such contracts should build the storage facilities for our state use, both on and off stream, whichever is the most beneficial to the immediate proposals, and we beleive that such facilities must be multiple use---and that multiple use must ensure agriculture the continuous supply needed.

We do reoognize that agriculture has existing priorities and reservations, but we also recognize that in other states similair priorities have changed; in Arizona for instance where agriculture priorities may be overridden for the growing municipalities need,

W.I.F.E. does not at this time consider changing our opposition to coal slurry.

We do recognize that--as weoften say--if you are forced into a ball game, you had better help make the rules of that game.

Mr. Chairman, Pat Underwood, who was unable to be here tonight asked this testimony be recorded for the Farm Bureau also.

Thank you.

Exhibit 30

TESTIMONY OF TONI KELLEY, CHAIRMAN OF THE NORTHERN PLAINS RESOURCE COUNCIL

NPRC ACKNOWLEDGES THE PREMISE OF WESTERN WATER LAW: THE BEST WAY TO PROTECT WATER RIGHTS IS TO FIRMLY ESTABLISH THEM BY PUTTING WATER TO BENEFICIAL USE.

HOWEVER, WE FEEL IT IS SHORT-SIGHTED TO FINACE WATER DEVELOPMENT BY MARKETING WATER. IN MANY WAYS HB 893 & 894 ATTEMPT TO PROTECT OUR EXISTING WATER USERS AND FUTURE USES; BUT THE SELLING OF WATER TO OUT OF BASIN CONSUMPTIVE USERS WILL ONLY NEGATE THE PROTECTIVE BENEFITS.

MOST MONTANANS WANT WATER TO BE PUT TO BENEFICIAL USE IN OUR STATE, BUT THE PRINIPLE OF DEPENDING ON INDUSTRY TO PAY MOST OF THE TAB SEEMS DANGEROUS TO ME.

THERE ARE MANY POLICY ISSUES RAISED BY THE ESTABLISHMENT OF A WATER MARKETING PROGRAM. THESE SHOULD BE ANSWERED BEFORE WE TAKE SUCH A BOLD STEP.

THE FIRST AND MOST FRIGHTENING IS HOW WILL DOWNSTREAM STATES REACT? THEY HAVE SUED OVER THE ETSI/SOUTH DAKOTA WATER SALE. THEY FEEL THREATENED AND ARE SEEKING LEGAL RELIEF. EVEN MORE FRIGHTENING IS THE THOUGHT OF A CONGRESSIONAL SOLUTION. CONGRESS ' ABILITY TO OVERRIDE WESTERN WATER LAW OR TO ALTER LAWS FAVORABLE TO UPSTREAM STATES SUCH AS THE 1944 FLOOD CONTROL ACT IS VERY REAL.

WE MUST TAKE A REASONED APPROACH TO THE MARKETING AND DEVELOPMENT OF WATER,OR DOWNSTREAM STATES WILL CONTINUE TO SEEK A LEGAL SETTLEMENT.

THE MISSOURI RIVER BASIN CONFLICTS WILL NOT GO AWAY, BUT WILL ONLY INTENSIFY AS DEVELOPMENT AND DEMAND INCREASE. DOWNSTREAM STATES RECOGNIZE THE DESIRES OF UPSTREAM STATES TO DEVELOP THEIR WATER. AN ACCELERATED PROGRAM FINANCED BY WATER SALES FOR CONSUMPTIVE USES WILL DEFINITELY CAUSE INCREASED ALARM.

OUR CONGRESSIONAL DELEGATION HAS FOUGHT THE GRANTING OF EMINENT DOMAIN FOR COAL SLURRY PIPELINES FOR YEARS. THEY QUESTION WHETHER A PRIVATE COMPANY SHOULD BE ABLE TO CONDEMN FARMERS AND RANCHERS WHEN THERE ARE TRANSPORTATION ALTERNATIVES. THEY ARE AFRAID THAT SUCH A GRANT OF POWER WILL BE INTERPRETTED AS A DETERMINATION THAT COAL SLURRY PIPELINES ARE IN THE NATIONAL INTEREST AND THEREFORE ENABLE THEM TO CONDEMN FOR WATER.

IT IS PUZZLING TO US TO SEE BILLS THAT LEGALIZE COAL SLURRY PIPELINES NOW, THAT ALSO INCLUDE LANGUAGE TO STUDY THEM. IT IS LIKE GOING INTO A DARK ROOM AND LOCKING THE DOOR BEHIND YOU BEFORE YOU TURN ON THE LIGHTS TO SEE WHAT IS AHEAD.

COAL SLURRY PIPELINES RAISE NUMEROUS QUESTIONS OF THEIR OWN. WHAT WILL HAPPEN TO OTHER SHIPPERS IF RAILROADS LOSE PART OF THEIR MOST PROFITABLE HAULAGE? WILL AGRICULTURAL RATES GO UP? WILL MORE BRANCH LINES BE ABANDONED? WILL SERVICE GET WORSE?

WE ARE ALSO CONCERNED TO SEE THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION HAS EXPRESSED THE NEED TO PROTECT OUR WATER, BUT NOW THEY ARE SUPPORTING THE SALE OF IT IN HOUSE BILL 893.

IN TESTIMONY BEFORE A SENATE COMMITTEE ON ESTABLISHING A WATER RESERVATION SYSTEM ON THE MISSOURI, DNRC TESTIFIED THAT (QUOTE) IMPLEMENTING A FULL SCALE RESERVATION PROCESS IN THE BASIN MAY BE PERCIEVED BY DOWN STREAM INTERESTS AS AN IMMEDIATE THREAT TO BE RESISTED--A REACTION TO WHICH MONTANA MAY NOT BE PREPARED TO ADEQUATELY RESPOND. THE SUGGESTED APPROACH, THEN IS TO FIRST ACQUIRE THE INFORMATION NEEDED TO DEFINE AND DEFEND A FUTURE WATER ALLOCATION. THIS IMPORTANT STUDY WOULD ENTAIL A DETAILED AND ACCURATE WATER AVAILABILITY ANALYSIS WHICH DETERMINES THE AMOUNT AND LOCATION OF WATER AVAILABLE FOR APPROPRIATION. (END QUOTE)

IT APPEARS TO US THAT DNRC IS ADMITTING WE DO NOT KNOW HOW MUCH WATER IS AVAILABLE AND WE MAY NOT BE READY TO GO TO COURT TO DEFEND OUR ACTIONS. THE PROPOSED BILLS OR A WATER SALE WILL PUT US IN THIS SITUATION.

MANY OF OUR MEMBERS ARE DOWNSTREAM GRAVITY IRRIGATORS, WHO ARE CONCERNED THAT IN DROUGHT YEARS WATER MAY NOT REACH THEIR DIVERSIONS.

RIVER AND STREAM ELEVATION IS NOT GUARANTEED IN WESTERN WATER LAW. IN THIS INSTANCE CAN WE TELL AN INDUSTRIAL USER WHO HAS INVESTED MILLIONS MAYBE BILLIONS TO SHUT DOWN? THE COURTS HAVE BEEN HESITANT TO CLOSE DOWN PROJECTS ENTAILING LARGE INVESTMENTS IN WATER CASES.

I DON"T BELIEVE WE WANT TO GET INTO THAT POSITION. WHAT ABOUT THOSE IRRIGATORS WITH PRIOR RIGHTS? DO WE SEND OUR REGRETS?

I URGE A "DO PASS" ON HOUSE BILL 903.

THANKYOU.

Exhibit 34

(Taken from the tape of the March 16, 1983 hearing.)

DON SNOW:

I'll skip over the things mentioned and just talk about a few that weren't covered. There is a number of issues surrounding the water marketing debate. Some have become quite clear but some haven't surfaced so far. First there is apparently some dissatisfaction with the rate of coal flow out of Montana to its coal markets today. Otherwise why would we even consider legislating to enable the construction of a new and largely untested coal transport technology. There was an allusion to Wyoming's currently high coal production as if that should be the model for Montana. Should it?

Secondly, coal slurry proponents in Montana are apparently confident that coal slurry lines can be built to compete with railroads shipping coal. Confident enough to make rather precise predictions about slurry line economics. I would remind the committee of two facts: 1500 mile coal slurry pipelines are a future and not an existing technology. Lines built formerly, just a few, are short and captive. Second, we heard the confident assertion of expected costs before from the energy industry. Rate payers who are serviced by nuclear auxiliaries such as Wilkes remember them quite well as do proponents of shale oil fuels. Third, why are we even discussing the issue of coal slurry in light of the depressed market and likely the future depressed market for northern great plains coal. A single slurry line that is 15 to 20,000 annual acre feet of water would move almost as much coal as Montana produced in 1982. With the electicity growth rate actually falling nationally to a negative two percent in 1982, the first year of a negative growth rate since World War II, and most energy forecasters predicting growth levels at less than 1/2 the average levels for the past three decades, where will all this slurried coal be consumed.

Finally, if what we are really hoping for today is the receipt of a future sum of cash from some coal slurry arrangement to be spent on worthy water development projects for Montana, a question we would ask is how many of our revenue wagons in Montana do we want to hitch to coal development or to activities directly related to coal development. This is a question that hasn't been asked seriously for several years in the state. It seems to me that studying the issue more carefully than we have and at the same time amending our out of state marketing ban into clear constitutionality is really the best choice that we have. HB 908 allows for both of these wise moves.

When all the heat and smoke disappears from this debate, I think that there really are just two issues. Can we protect our water law against constitutional attacks by amending the out-of-state transport ban but leaving the coal slurry ban intact and secondly does Montana really want to enter into a contract with the first coal slurry company since Sporhase to show up in

Exhibit 35

Montana Senior Citizens Assn., Inc.

WITH AFFILIATED CHAPTERS THROUGHOUT THE STATE
P.O. BOX 423 · HELENA, MONTANA 59624

(406) 443-5341

16 March 1983

TESTIMONY OF LLOYD ANDERSON, HELENA CHAPTER, MONTANA SENIOR CITIZENS ASSOCIATION, ON HOUSE BILL 893, 894, 908

For the record, my name is Lloyd Anderson, and I am a member of the Helena Chapter of The Montana Senior Citizens Association. The Helena Chapter of M.S.C.A. is opposed to HB 893 for the following reasons.

We believe everyone residing in this great state has an equal right to the use of Montana water for general purposes, such as drinking, washing, irrigating, agriculture and livestock and municipal uses, as well as recreation and fish and game.

South Dakota, we understand, has sold water for a slurry pipeline and also irrigation and municipal water uses. The Montana Senior Citizens Association, at its Annual Meeting in October of 1982, adopted a resolution opposing coal slurry pipelines that would use Montana's water.

If we have a series of dry years, we could be forced into open impoundments of our water on the Missouri, Big Horn, and Powder rivers and all other rivers and streams to supply these down-stream users. Then what can we do but stand on the bank and watch our water go down-stream? We also could be sued for water for our own use.

Also, the State of Montana has not processed all the water right claims from 2 years ago.

We are opposed to any slurry or pipelines taking water out-of-state because before any of these lines are built, we will have to let them appropriate encugh water to guarantee enough water to operate the facilities.

Finally, Montana Seniors fear the effect of establishing pipelines will have on the rate base for our state's utility consumers. Because large amounts of energy would be necessary for the pumping of water for these pipelines, the cost of this will be included in the rate base. Thus, Montana consumers would be adversely affected financially, and our association has already protested current rate hikes. Asking for them to pay even more because of pipeline use is entirely unfair.

Exhibit 36

March 16, 1983

TESTIMONY OF JOHN BYRD ON HOUSE BILL 894

For the record, my name is John Byrd and I live in Helena. I am opposed to House Bill 894 for several reasons. 893 & 894 & 908

First, every man, woman and child in this state has an equal right to Montana's water and I don't believe that a handful of legislators and a governor have the right to dispose of any of it through the hanky panky of the legislature. Arizona lost their rights to their supply of water in the Colorado River which they had been using for years. Los Angeles water power takes it now.

Secondly, South Dakota is currently being sued by down-stream states over water use.

Thirdly, if you sold surplus water for a slurry, they would not put in a pipeline without a designated amount of acre feet. For the last many years, we have not had a real dry year, but it could happen again. When I was 11 years old, I and several other children waded the Missouri River just above the 15th Street Bridge in Great Falls. Over half the width of the river was dry.

Finally, we are still years away from completing our adjudication to determine the amount of water actually claimed.

Exhibit 37

(Taken from the tape of the March 16, 1983 hearing.)

BILL BRASHER:

I am here to express Burlington Northern's concerns about the potential use of water for coal slurry purposes. Briefly, I must reply to some of the justifications presented for selling the water. One reason being advanced by the supporters of coal slurry is that it will expand the market for Montana's coal. Now it should be recognized that the construction of a slurry pipeline will not be an increase in coal production. Production of coal will depend largely upon the price of competing sources of energy. If the price of oil continues to fall as it has done very rapidly in the past few days, we can unfortunately continue to see a slower growth in the development of the production and marketing of coal.

And looking at the history of slurry pipelines constructed in the history of the United States. The one in Ohio was shutdown because it could not compete with the railroad that was operating in that area. The second one still operates in Arizona. However, that particular pipeline uses coal at a higher rate than any . . . . (unclear)

Coal remains one of Burlington Northerns leading commodities. Last year alone we originated nearly 118 million tons of coal. We have standard methods for moving coal in Montana and are now interested in developing export markets for the coal. Promoters of slurry pipelines have said that they are a less costly and more efficient way of moving coal. However, Mr. Chairman, I would note that the Congressional Budget Office in 1982 found that unit train operations are 43 percent more energy efficient than slurry pipelines. That is not a Burlington Northern statement but a Congressional Budget Office study that found that a slurry pipeline uses an estimated 1300 Btus per ton mile in moving coal while a unit train uses approximately 900 Btus. The net result, therefore, is that coal slurry pipelines are not nearly as efficient as railroads in unit trains when it comes to moving coal.

As a railroad, a great deal of our business in Montana is related to agricultural production. Naturally, these things may have an adverse impact on agricultural production in Montana. It would also have an adverse impact on the railroad industry.

I don't know how anyone in this room can tell us if there is any excess water for coal slurry 20, 30, 40 years down the line. It has been suggested that the railroad does not have the capacity or capability to move all the coal that may be produced in the next two or three decades. These suggestions are erroneous. On the Northern Burlington alone we have tremendous excess of equipment at this time. We have millions of dollars worth of equipment idle, thousands of employees laid off. However, the demand for that coal is not there at this present time.

There has been some confusion about whether the slurry pipeline would have the right of eminent domain under some of the bills proposed here. This should be resolved immediately with amendments if any of the bills are seriously considered, that would clarify that a slurry pipeline would not have the right of eminent domain in the state of Montana. The right of eminent domain should only be afforded to those companies or organizations that have an obligation to serve the public generally, not to a public pipeline which is only for one utility or a limited area.

. . . . (unclear) that we are concerned about reaching on current regulation, either on the state or federal level, is the effect the use of water for agriculture or could harm agricultural development in the future. Control slurry pipelines - unquestionably they use a tremendous amount of water, and we are not convinced that there is or would be a sufficient availability of water now or in the future for coal slurry.

We are all concerned about the loss of railroad jobs. We are concerned about the long term commitments of 40 to 45 years for water that will have a constant impact on agricultural users.

Burlington Northern has no plan to build a coal slurry pipeline of its own. We do not oppose, however, the building of a coal slurry pipeline simply because they would be an expedient mode of transportation. Fact is many a time . . . (unclear). However, we do oppose a big jump in the slurry pond until the water has been thoroughly sampled. If selling water is detrimental to Montana farmers and ranchers and numbers of Burlington Northern employees, then we must oppose the selling of such water.

Exhibit 38a
27

WITNESS STATEMENT

Name Esther L. Lund. Committee On House Natural Resources

Address Butte Date 3-16-83

Representing Montana Cattlewomen Assn. Support X

Bill No. HB 894 & HB 893 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. We support much of both bills.
We also support a long thought study of new water supply. If a surplus does exist and use of this surplus water will not prove detrimental to and state water needs, then we only then should we consider the sale of any of our water.
2. Agriculture must be assured of adequate supply of water which will be provided at a reasonable cost.
3. We seriously question the possibility of using water for coal slurry pipelines. We have genuine concern as to the repercussions we may all encounter if water is used for such a purpose.
4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

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Exhibit 39

WITNESS STATEMENT

Name Chester W. Peterson Committee On

Address Columbus, Mont. 59019 Date March 16, 1983

Representing Stillwater County Water Users Support 908

Bill No. 908 (For) Oppose 893 - 894

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. There are still to many unanswered questions for agriculture when it comes to water marketing at this time.

2. Our members would feel a lot more comfortable if the legislature would make a more thorough study of the issues concerning our states water.

3. The water judges and Board of Natural Resources should have a lot more information to contribute over the nxt 2 yrs. as to some idea of what is left to sell.

4. We've had a water export policy since 1921. When you have had a policy that long it is probably wise and prudent to take some time to evaluate the changes.

I assume that Bills 893 and 894 would revise the policy.

At this time we feel that we would support the policies contained in Bill 908.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

Exhibit 40

TESTIMONY OF WALTER ARCHER BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE: House Bills 893, 894, and 908

Mr. Chairman, Members of the Committee, I am Walter Archer, Olive, Montana, President of the Powder River Protective Association and Vice Chairman of the Northern Plains Resource Council. I'm also on the Board of the Powder River Conservation District. I operate a farm and ranch. I'm here to support House Bill 908 and oppose House Bills 893 and 894.

People have said that this is an emotional issue. It certainly is - but not for sentimental reasons. Water is vital to our economic, social and political well-being. Western historians point time and again to the frequent and disastrous consequences of overestimating or misunderstanding the availability and nature of water. You are presented with the single, most important question to come before this legislative session. Shall we, right now, set up a program to sell our water out-of-state and out-of-basin and legalize coal slurry? --- or --- Shall we take the time , in a broad public forum, to study and debate the question.

I have some concern that we haven't nearly come close to analyzing the situation. As much talk as we have all heard about being an upstream state, it may surprise some to learn we're also a downstream state. In particular in the Yellowstone Basin, including where I come from on the Powder River. If Wyoming takes the attitude that water flowing out of its boundaries is somehow wasted, we

could be in real trouble. If Wyoming bottles up its share of the Powder River under the Yellowstone Compact, we're very likely out of business downstream in Montana! Not even because of the quantity of water, so much, as because of the quality of water remaining.

One of the reasons I strongly support House Bill 908 is that it recognizes the importance of having viable water. In other words, we may retain access to our water rights, but have water that is too bad to be used in irrigation.

When you're talking about selling water out of the state, it bothers me because I believe that rivers were meant to have water in them. There has to be a certain quantity of water to assure its quality. I know the rivers run dry in the southwestern United States - I don't think that happened overnight, but it happened bit by bit in small pieces, and it started somewhere. I know people have said that water sales are a renewable industry. I would have to make the observation that water is nevertheless a finite resource, sometimes extremely finite.

I'd like to talk a little bit about coal slurry. I do not believe coal slurry is a beneficial use of water for these reasons:

First: It not only takes water out of the river, but out of the basin. That water is forever lost to that water system.

Second: It is a potentially consumptive use of water. Although theoretically, water might be treatable at the opposite end of the line, slurry economics appear to preclude this.

Third: Water is not essential as a medium to transport coal. We have a viable, flexible rail transportation network which no one can say is incapable of moving as much coal as can be marketed.

There are other problems with slurrying coal:

1) It is energy intensive. On the average, it will require nearly three times the BTU energy per ton-mile as does a unit train.

2) It won't prevent mine-mouth power plants. With such high energy demands, it will require its own mine-mouth plant. (And that, in itself, will use more water.)

3) Coal slurry would open one permanent job for every ~~seven~~ that the railroad providing the same service at approximately the same cost would provide. This state is trying to promote jobs, not discourage them.

4) The Burlington Northern has made a significant capital investment in its rails and rolling stock, banking on the coal traffic. If coal slurry steals that traffic, other commodoties will pick up the tab - A bill that agricultural shippers can ill-afford to pay.

5) Electric consumers at the other end should be scared to death of a cost-plus pipeline project that could go into their rate base, regardless if the coal is actually delivered!

Both 893 and 894 legalize coal slurry. Don't be fooled by a 1987 sunset and an EIS window dressing in 893.

HB 908, on the other hand, protects us by putting water pipelines under the Siting Act without repealing our slurry law.

Both 893 and 894 put the state in the water sales business, and then set up a two-year study.

HB 908 gives two years to study the issues and then gives the Legislature the chance to vote on water sales. (It puts the horse before the cart.)

HB 908 gives us two more years to quantify available water and analyze where it is available through our adjudications and tribal compact negotiations.

HB 908 is the only bill of the three that recognizes the importance of seeking negotiated settlement of Missouri Basin conflicts as preferable to congressional or judicial solutions.

I strongly urge your support of House Bill 908.

Exhibit 41

Montana Association of Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 1708 • Helena, MT 59601

March 16, 1983

WORKING TOGETHER:

American Baptist Churches of the Northwest

American Lutheran Church Rocky Mountain District

Christian Church (Disciples of Christ) in Montana

Episcopal Church Diocese of Montana

Lutheran Church in America Pacific Northwest Synod

Roman Catholic Diocese of Great Falls

Roman Catholic Diocese of Helena

United Church of Christ Montana Conference

United Presbyterian Church Glacier Presbytery

United Methodist Church Yellowstone Conference

United Presbyterian Church Yellowstone Presbytery

MR. CHAIRMAN AND MEMBERS OF THE HOUSE NATURAL RESOURCES COMMITTEE:

I am Cathy Campbell, representing the Montana Association of Churches, and speaking in support of House Bill 908.

The Association of Churches recognizes that Montana's land and water are finite resources which face increasing demands for a variety of often conflicting uses. Our faith sees the role of human beings in the world as that of a steward. Water is therefore not simply a commodity to be bought and sold. It is essential to all life and is a trust to be used wisely so that everyone, including future generations, can enjoy its rich benefits.

Legislation is appropriate to resolve growing conflicts surrounding use of water.

The nine denominations represented by the Association of Churches have unanimously adopted a position on Energy and the Environment in which we urge the legislature to prohibit coal slurry pipelines until a determination is made that such pipelines will not be detrimental to the long-term quality and quantity of Montana's water resources.

I therefore ask your support of HB 908.

Exhibit 42

WITNESS STATEMENT

Name Hood S. Cathcart Committee On

Address Absarokee Montana Date March 16 1983

Representing Stillwater Water Users Assn Support 908

Bill No. 908 Oppose 893 & 894

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. I think there are still a lot of questions to be answered when it comes to the sale of our State Water
2. capacity for agriculture We do not know how much water we have until the adjudication is final
3. I do feel Bill 908 is our best Bill especially with the Eight man board for a complete study as to the amount of surplus Water is on Hand.
4. I feel we must take care of Montana ag, & Montana citizens as well as our aqueduct system With out our Cross water & Rosebud we would have very little Surface said a aqueduct system.
We have a water quality problem that needs further study also.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

STANDING COMMITTEE REPORT

March 24, 19 83

MR. SPEAKER:

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE Bill No. 908

first reading copy (white color)

A BILL FOR AN ACT ENTITLED: "AN ACT ADDING CERTAIN PIPELINES TO THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT; PROHIBITING THE ISSUANCE OF PERMITS FOR CERTAIN AMOUNTS OF WATER WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR A STUDY BY A SELECT COMMITTEE OF WATER MARKETING; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 75-20-104, 75-20-216, 75-20-218, 75-20-303, 75-20-304, 75-20-1202, 85-1-205, AND 85-2-311, MCA; REPEALING SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That HOUSE Bill No. 908

be amended as follows:

1. Page 5, line 5.
Following: line 4
Strike: "or"
Insert: "and"

2. Page 17, line 17.
Strike: "5,000"
Insert: "10,000"

3. Page 17, line 18.
Strike: "7"
Insert: "15"

4. Page 18, line 21.
Following: "appropriation"
Insert: "for a diversion for a consumptive use"

5. Page 18, line 21.
Strike: "5,000"
Insert: "10,000"

6. Page 18, line 22.
Strike: "7"
Insert: "15"

AND AS AMENDED DO PASS

HAL HARPER
Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

SIXTY-NINTH LEGISLATIVE DAY

Helena, Montana
March 26, 1983

House Chambers
State Capitol

House convened at 9:00 a.m., Mr. Speaker in the Chair. Invocation by Representative Addy. Pledge of Allegiance to the Flag.

Roll call. All members present except Committee on Appropriations, Committee on Labor, Committee on State Administration, Bergene, Nordtvedt, Seifert, excused. Quorum present.

SPECIAL ORDERS OF THE DAY

The Cutbank High School choir sang for the members of the House.

REPORTS OF STANDING COMMITTEES

BILLS (J. Brown, Vice-Chairman): 3/26/83
Correctly printed: HB 435.
Considered correctly engrossed: HB 858. 3/25/83

BILLS (Menahan, Chairman): 3/25/83
Correctly printed: HB 893, HB 908.
Correctly enrolled: HB 96, HB 420, HB 455, HB 459, HB 467, HB 513, HB 651, HB 671, HB 687, HB 699, HB 822.
Examined by the sponsor (Driscoll) and found to be correct: HB 455.
Examined by the sponsor (Yardley) and found to be correct: HB 96.
Examined by the sponsor (J. Jensen) and found to be correct: HB 467.
Examined by the sponsor (Menahan) and found to be correct: HB 671, HB 687.
Examined by the sponsor (Eudaily) and found to be correct: HB 651.
Examined by the sponsor (Dozier) and found to be correct: HB 420.
Examined by the sponsor (Pavlovich) and found to be correct: HB 513.
Examined by the sponsor (Hemstad) and found to be correct: HB 459.
Examined by the sponsor (Donaldson) and found to be correct: HB 822. 3/26/83
Examined by the sponsor (Winslow) and found to be correct: HB 699.

MESSAGES FROM THE OTHER HOUSE

House bills not concurred in and returned to the House: 3/25/83

HB 115, introduced by Waldron

HB 174, introduced by Harper

HB 356, introduced by Vincent, Kemmis, Fabrega, et al.

HB 386, introduced by Vincent, Winslow, Eck

HB 387, introduced by Vincent, Eck

HB 406, introduced by Smith, Jones, Stobie, et al.

HB 576, introduced by Lory, Eudaily, Fagg, et al.

HB 850, introduced by House Labor and Employment Relations Committee

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MOTIONS

Representative Kitselman moved that the rules be temporarily suspended to allow for the introduction of a resolution. Motion carried.

Sands, Seifert, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Wallin, Winslow.
Total 45

Paired: Addy, Darko, Harper, Kemmis, Nordtvedt, Peck, Ream, Vincent, Waldron, Ayes; Donaldson, Eudaily, Hannah, Holliday, Pistoria, Ryan, Seifert, Swift, Thoft, Noes.

Excused: Dozier, Hand, Nilson.
Total 3

Absent or not voting: Vinger.
Total 1

Representatives D. Brown and Hammond excused at this time.

Representatives Hand, Pistoria, and Thoft present at this time.

HB 898 - That HB 898 do pass. Motion carried as follows:

Ayes: Abrams, Addy, Bachini, Bardanouve, Bengtson, Bergene, Bertelsen, Bliss, Brand, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Driscoll, Ellerd, Ellison, Ernst, Fabrega, Fagg, Farris, Hand, Hannah, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, R. Jensen, Jones, Kadas, Keenan, Kemmis, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nisbet, O'Connell, Pavlovich, Phillips, Pistoria, Quilici, Ramirez, Ream, Roush, Sales, Sands, Saunders, Schultz, Schye, Shontz, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Veleber, Vincent, Vinger, Wallin, Williams, Winslow, Yardley, Zabrocki.
Total 86

Noes: None.
Total 0

Excused: D. Brown, Donaldson, Dozier, Eudaily, Hammond, Nilson, Nordtvedt, Peck, Ryan, Seifert, Waldron.
Total 11

Absent or not voting: Asay, J. Jensen, Kennerly.
Total 3

Representatives Driscoll, R. Jensen, Menahan, Mueller, and Neuman excused at this time.

HB 908 - That HB 908, second reading copy, be amended as follows:

1. Page 5, line 6.
Following: "designed"
Insert: "and intended"

2. Page 5, line 7.
Strike: "or capable of"

Amendment passed as follows:

Ayes: Abrams, Addy, Bachini, Bardanouve, Bengtson, Bergene, Bertelsen, Bliss, Brand, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Ellerd, Ellison, Ernst, Fabrega, Fagg, Farris, Hand, Hannah, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, Jones, Kadas, Keenan, Kemmis, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Manuel, Metcalf, Miller, Nisbet, O'Connell, Pavlovich, Phillips, Pistoria, Quilici, Ramirez, Roush, Sales,

Sands, Saunders, Schultz, Shontz, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Veleber, Vinger, Wallin, Williams, Winslow, Yardley, Zabrocki.
Total 77

Noes: Marks.
Total 1

Excused: D. Brown, Donaldson, Dozier, Driscoll, Eudaily, Hammond, R. Jensen, Menahan, Mueller, Neuman, Nilson, Nordtvedt, Peck, Ryan, Seifert, Waldron.
Total 16

Absent or not voting: Asay, J. Jensen, Kennerly, Ream, Schye, Vincent.
Total 6

Representatives Compton and Quilici excused at this time.

Representatives Driscoll, Hammond, Menahan, Neuman, Peck, Ryan, and Waldron present at this time.

That HB 908, second reading copy, be further amended. Amendment failed as follows:

Ayes: Abrams, Asay, Bliss, Curtiss, Daily, Devlin, Driscoll, Ellerd, Ellison, Fagg, Hannah, Harp, Hemstad, Holliday, Iverson, Jacobsen, Jones, Keyser, Kitselman, Lory, McCormick, Marks, Manuel, Miller, Neuman, Phillips, Roush, Ryan, Sales, Sands, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Vinger, Winslow.
Total 40

Noes: Addy, Bachini, Bardanouve, Bengtson, Bergene, Bertelsen, Brand, J. Brown, Connelly, Darko, Ernst, Fabrega, Farris, Hammond, Hand, Hansen, Hanson, Harper, Harrington, Hart, Howe, J. Jensen, Kadas, Keenan, Kemmis, Koehnke, Lybeck, McBride, Menahan, Metcalf, Nisbet, O'Connell, Pavlovich, Peck, Pistoria, Ramirez, Ream, Saunders, Schye, Shontz, Veleber, Vincent, Waldron, Wallin, Williams, Yardley, Zabrocki.
Total 47

Excused: D. Brown, Compton, Donaldson, Dozier, Eudaily, R. Jensen, Mueller, Nilson, Nordtvedt, Quilici, Seifert.
Total 11

Absent or not voting: Kennerly, Schultz.
Total 2

Representative Bengtson excused at this time.

Representatives Compton, Donaldson, Mueller, and Quilici present at this time.

That HB 908, as amended, do pass. Motion carried as follows:

Ayes: Addy, Asay, Bardanouve, Bergene, Bertelsen, Bliss, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Driscoll, Ellison, Ernst, Fabrega, Fagg, Farris, Hammond, Hannah, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, Jones, Kadas, Keenan, Kemmis, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, Marks, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nisbet, O'Connell, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Roush, Sales, Sands, Saunders, Schultz, Schye, Shontz, Smith, Spaeth, Swift, Switzer, Thoft, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Yardley, Zabrocki.

Total 80

Noes: Bachini, Brand, Ellerd, Hand, McCormick, Pavlovich, Ryan, Solberg, Stobie, Underdal.
Total 10

Excused: Bengtson, D. Brown, Dozier, Eudaily, R. Jensen, Nilson, Nordtvedt, Seifert.
Total 8

Absent or not voting: Abrams, Kennerly.
Total 2

HJR 36 - Representative Vincent moved that consideration on HJR 36 be passed for the day. Motion carried.

Representative R. Jensen present at this time.

Representatives Bachini, Driscoll, and the Committee on Appropriations excused at this time.

SB 40 - That SB 40 be concurred in. Motion carried as follows:

Ayes: Abrams, Asay, Bergene, Bertelsen, Bliss, J. Brown, Compton, Connelly, Curtiss, Daily, Devlin, Ellerd, Ellison, Ernst, Fabrega, Hansen, Hanson, Harp, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, R. Jensen, Kadas, Keenan, Kemmis, Keyser, Kitselman, Koehnke, Lybeck, Menahan, Metcalf, Mueller, Neuman, Nisbet, O'Connell, Phillips, Pistoria, Quilici, Ramirez, Ream, Ryan, Sales, Sands, Schultz, Solberg, Spaeth, Swift, Switzer, Underdal, Veleber, Vincent, Vinger, Wallin, Yardley, Zabrocki.
Total 59

Noes: Brand, Darko, Hammond, J. Jensen, McBride, Peck, Saunders, Schye.
Total 8

Excused: Bachini, Bardanouve, Bengtson, D. Brown, Donaldson, Dozier, Driscoll, Eudaily, Farris, Hand, Hannah, Harper, Jones, Lory, McCormick, Manuel, Miller, Nilson, Nordtvedt, Pavlovich, Roush, Seifert, Shontz, Smith, Stobie, Thoft, Waldron, Williams, Winslow.
Total 29

Absent or not voting: Addy, Fagg, Kennerly, Marks.
Total 4

Representatives Addy, Brand, J. Brown, Connelly, Ellerd, Hemstad, R. Jensen, Peck, and Quilici excused at this time.

Representative Harper present at this time.

SB 84 - That SB 84, third reading copy, be amended as follows:

1. Page 3, line 3.
Strike: "(1)"

2. Page 3, line 12.
Following: "move"
Strike: "or within 10 days upon receipt of the written notice of the move, whichever time comes sooner"

3. Page 3, lines 13 through 21.
Strike: subsection (2) in its entirety

Amendment passed as follows:

SEVENTIETH LEGISLATIVE DAY

Helena, Montana
March 28, 1983

House Chambers
State Capitol

House convened at 9:00 a.m., Mr. Speaker in the Chair. Invocation by the Chaplain, Reverend Harper. Pledge of Allegiance to the Flag.

Roll call. All members present except Daily, Dozier, Fabrega, Hannah, Harrington, Phillips, Shontz, excused. Quorum present.

Mr. Speaker: We, your Committee on Legislative Administration/Bills and Journal, having examined the daily journals for the sixty-sixth and sixty-seventh legislative days, find the same to be correct.

J. Brown, Vice-Chairman

REPORTS OF STANDING COMMITTEES

BILLS (J. Brown, Vice-Chairman): 3/28/83
Correctly printed: HB 1, HB 920.
Considered correctly engrossed: HB 435, HB 755, HB 841.
Correctly engrossed: HB 418, HB 908.

LEGISLATIVE ADMINISTRATION/BILLS AND JOURNAL (J. Brown, Vice-Chairman): 3/26/83
SB 20, be concurred in. Report adopted.

LEGISLATIVE ADMINISTRATION/BILLS AND JOURNAL (Menahan, Chairman): 3/26/83
SB 451, third reading copy, be amended as follows:

1. Title, line 4.
Strike: "CENTRALIZE"
Insert: "IMPROVE"

2. Title, line 6.
Strike: "SERVICES"
Insert: "MANAGEMENT IMPROVEMENT"
Strike: "TO REPLACE"

3. Title, lines 8 through 12.
Following: "~~COMMITTEE,~~" on line 8
Strike: remainder of line 8 through "2-4-102," on line 12

4. Title, lines 12 through 14.
Strike: "5-11-105," on line 12 through line 14

5. Title, lines 16 through 18.
Following: "~~5-13-203,~~" on line 16
Strike: remainder of line 16 through "THROUGH" on line 18

6. Title, line 18.
Strike: "5-18-110, and 90-4-303,"

7. Title, line 19.
Strike: "MCA"
Strike: "IMMEDIATE"
Strike: "FOR A PORTION"

8. Title, line 20.
Strike: "OF THE ACT"
Insert: "AND TERMINATION DATE"

Total 21

Excused: Fabrega, Nilson.
Total 2

Absent or not voting: Bardanouve, Hemstad, Kadas, Kemmis, Keyser, McCormick, Manuel, Nordtvedt, Schye.
Total 9

That SB 21, as amended, be concurred in. Motion carried as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bengtson, Bergene, Bertelsen, Bliss, Brand, D. Brown, J. Brown, Connelly, Daily, Dozier, Driscoll, Eudaily, Fagg, Farris, Hammond, Hand, Hansen, Harper, Harrington, Hart, Holliday, Howe, Iverson, J. Jensen, Kadas, Keenan, Kemmis, Kennerly, Koehnke, Lory, Lybeck, McBride, McCormick, Menahan, Metcalf, Miller, Neuman, Nisbet, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ream, Roush, Sands, Saunders, Schye, Shontz, Spaeth, Veleber, Vincent, Vinger, Waldron, Williams, Winslow, Yardley, Zabrocki.
Total 63

Noes: Compton, Curtiss, Devlin, Donaldson, Ellerd, Ellison, Ernst, Hannah, Hanson, Harp, Jacobsen, R. Jensen, Jones, Kitselman, Marks, Mueller, Ramirez, Ryan, Sales, Schultz, Seifert, Smith, Solberg, Stobie, Swift, Switzer, Thoft, Underdal, Wallin.
Total 29

Excused: Fabrega, Nilson.
Total 2

Absent or not voting: Bardanouve, Darko, Hemstad, Keyser, Manuel, Nordtvedt.
Total 6

Representative Vincent moved that the committee rise and report and beg leave to sit again. Motion carried. Committee arose. House resumed. Mr. Speaker in the Chair. Chairman Brand moved that the committee of the whole report be deemed read. Motion carried. Chairman Brand moved the adoption of the committee report. Report adopted. (88-4)

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

HB 418 passed as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bengtson, Bergene, Bertelsen, Bliss, Brand, D. Brown, J. Brown, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Driscoll, Ellison, Ernst, Eudaily, Farris, Hammond, Hand, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kennerly, Keyser, Koehnke, Lory, Lybeck, McBride, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nisbet, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Roush, Ryan, Saunders, Schultz, Schye, Seifert, Shontz, Smith, Solberg, Spaeth, Stobie, Thoft, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Yardley, Zabrocki, Mr. Speaker.
Total 84

Noes: Compton, Ellerd, Fagg, Hannah, Kitselman, McCormick, Marks, Sales, Sands, Swift, Switzer, Underdal.
Total 12

Marks, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nisbet, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ream, Roush, Ryan, Sands, Saunders, Schultz, Schye, Seifert, Shontz, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Zabrocki, Mr. Speaker.
Total 88

Noes: Bardanouve, Bertelsen, Eudaily, Lory, Lybeck, Ramirez, Sales, Yardley.
Total 8

Excused: Fabrega, Nilson.
Total 2

Absent or not voting: Ellison, Nordtvedt.
Total 2

HB 898 passed as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bengtson, Bergene, Bertelsen, Bliss, Brand, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Driscoll, Ellerd, Ellison, Ernst, Eudaily, Fagg, Farris, Hammond, Hand, Hannah, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kennerly, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nisbet, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Roush, Ryan, Sales, Sands, Saunders, Schultz, Schye, Seifert, Shontz, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Yardley, Zabrocki, Mr. Speaker.
Total 96

Noes: None.
Total 0

Excused: Fabrega, Nilson.
Total 2

Absent or not voting: Keyser, Nordtvedt.
Total 2

HB 908 passed as follows:

Ayes: Abrams, Addy, Asay, Bardanouve, Bengtson, Bergene, Bertelsen, Bliss, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Driscoll, Ellison, Ernst, Eudaily, Fagg, Farris, Hammond, Hand, Hannah, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Manuel, Menahan, Metcalf, Miller, Mueller, Nisbet, O'Connell, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Roush, Sales, Sands, Saunders, Schultz, Schye, Seifert, Shontz, Smith, Spaeth, Swift, Switzer, Thoft, Veleber, Vincent, Waldron, Wallin, Williams, Winslow, Yardley, Zabrocki, Mr. Speaker.
Total 86

Noes: Bachini, Brand, Dozier, Ellerd, Neuman, Pavlovich, Ryan, Solberg, Stobie, Underdal, Vinger.
Total 11

Excused: Fabrega, Nilson.
Total 2

Absent or not voting: Nordtvedt.
Total 1

SB 40 concurred in as follows:

Ayes: Abrams, Asay, Bachini, Bardanouve, Bengtson, Bergene, Bliss, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Devlin, Donaldson, Dozier, Driscoll, Ellerd, Ellison, Ernst, Eudaily, Fagg, Hand, Hannah, Hansen, Hanson, Harp, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nisbet, O'Connell, Pavlovich, Phillips, Pistoria, Quilici, Ramirez, Roush, Ryan, Sales, Sands, Schultz, Schye, Seifert, Shontz, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Zabrocki, Mr. Speaker.
Total 86

Noes: Addy, Bertelsen, Brand, Darko, Farris, Hammond, Harper, Peck, Ream, Saunders, Yardley.
Total 11

Excused: Fabrega, Nilson.
Total 2

Absent or not voting: Nordtvedt.
Total 1

SB 84 concurred in as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bengtson, Bergene, Bertelsen, Bliss, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Ellerd, Ellison, Ernst, Eudaily, Farris, Hammond, Hand, Hannah, Hanson, Harp, Harper, Harrington, Hart, Holliday, Howe, Iverson, Jacobsen, R. Jensen, Jones, Kadas, Keenan, Keyser, Kitselman, Lory, Lybeck, McBride, McCormick, Marks, Manuel, Metcalf, Miller, Mueller, Neuman, Nisbet, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Roush, Ryan, Sales, Sands, Saunders, Schultz, Schye, Seifert, Shontz, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Yardley, Zabrocki, Mr. Speaker.
Total 88

Noes: Brand, Driscoll, Fagg, Hansen, Hemstad, J. Jensen, Kennerly, Koehnke, Menahan.
Total 9

Excused: Fabrega, Nilson.
Total 2

Absent or not voting: Nordtvedt.
Total 1

SB 118 concurred in as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bengtson, Bergene, Bertelsen, Bliss, Brand, D. Brown, J. Brown, Compton, Connelly, Daily, Darko, Devlin, Donaldson, Dozier, Driscoll, Ellerd, Ellison, Ernst, Eudaily, Fagg, Farris, Hammond, Hannah, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Manuel, Menahan, Metcalf, Miller, Neuman, Nisbet, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ramirez,

HOUSE BILL NO. 908

INTRODUCED BY HARPER, BARDANOUVE, IVERSON, VINCENT, KEMMIS, ASAY, FABREGA

A BILL FOR AN ACT ENTITLED: "AN ACT ADDING CERTAIN PIPELINES TO THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT; PROHIBITING THE ISSUANCE OF PERMITS FOR CERTAIN AMOUNTS OF WATER WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR A STUDY BY A SELECT COMMITTEE OF WATER MARKETING; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 75-20-104, 75-20-216, 75-20-218, 75-20-303, 75-20-304, 75-20-1202, 85-1-205, AND 85-2-311, MCA; REPEALING SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility

employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries, and facilities and associated facilities designed for or capable of producing, gathering, processing, transmitting, transporting, or distributing crude oil or natural gas, and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other

facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of $10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of $10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $10 million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(c) each pipeline and associated facilities designed

for or capable of transporting gas (except for natural gas), ~~water,~~ or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection (10)(a) of this section;

~~(d) each pipeline greater than 20 inches in diameter~~ or AND 30 miles in length and associated facilities designed AND INTENDED for ~~or capable of~~ transporting water or using water as a transport medium;

~~(d)~~(e) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $750,000;

~~(e)~~(f) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(13) "Utility" means any person engaged in any aspect

of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 2. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies. (1) After receipt of an application, the department and department of health shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and list the deficiencies therein; and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department and department of health shall use, to the extent

they consider applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health shall within 1 year following the date of acceptance of an application and the board of health or department of health, if applicable, within an additional 6 months issue any decision, opinion, order, certification, or permit required under the laws administered by the department of health or the board of health and this chapter. The department of health and the board of health shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department of health and board of health administer, and any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the determinations made under the laws administered by the department of health and the board of health. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). The decision,

opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board and shall be utilized as part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in (a) and ~~(d)~~ (e) of 75-20-104(10) and for a facility as defined in (b) ~~and (c)~~ through (d) of 75-20-104(10) which is more than 30 miles in length and within 1 year for a facility as defined in (b) ~~and (c)~~ through (d) of 75-20-104(10) which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities,

the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of highways; commerce; fish, wildlife, and parks; state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 3. Section 75-20-218, MCA, is amended to read:

"75-20-218. Hearing date -- location -- department to act as staff -- hearings to be held jointly. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. ~~Except for those hearings involving applications submitted for facilities as defined in (5) and (c) of 75-20-104(10), certification~~ Certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion thereof is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department of health and the board of health shall hold any required permit hearings required under laws administered by those agencies in conjunction with the board certification hearing. In such a conjunctive hearing the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the department of health and the board of health."

Section 4. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision -- contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons therefor.

(3) Any certificate issued by the board shall include

the following:

(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facility;

(v) a plan for monitoring environmental effects of the proposed facility; and

(vi) a time limit as provided in subsection (4), during which construction of the facility must be completed;

(b) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) The board shall issue as part of the certificate the following time limits during which construction of a facility must be completed:

(a) For a facility as defined in (b)~~,~~ (c)~~,~~ or ~~(e)~~ (d) of 75-20-104~~(7)~~(10) that is more than 30 miles in length, the time limit is 10 years.

(b) For a facility as defined in (b)~~,~~ (c)~~,~~ or ~~(e)~~ (d) of 75-20-104~~(7)~~(10) that is 30 miles or less in length, the

time limit is 5 years.

(c) The time limit shall be extended for periods of 2 years each upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction. Under this subsection, a good faith effort to complete construction includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced."

Section 5. Section 75-20-304, MCA, is amended to read:

"75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a utility or person subject to this chapter that a facility or

associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of subsections (2)(c), (3)(b), and (3)(c) of 75-20-301 and 75-20-501(5) and the requirements of subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in subsections (10)(b), (c), (d), ~~(e)~~ or ~~(e)~~ (f) of 75-20-104, for an associated facility defined in subsection (3) of 75-20-104, or for any portion of or process in a facility defined in subsection (10)(a) of 75-20-104 to the extent that the process or portion of the facility is not subject to a permit issued by the department of health or board of health.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection shall be credited toward the fee paid under 75-20-215 to the extent the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under

this chapter.

(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."

Section 6. Section 75-20-1202, MCA, is amended to read:

"75-20-1202. Definitions. As used in this part and 75-20-201 through 75-20-203, the following definitions apply:

(1) (a) "Nuclear facility" means each plant, unit, or other facility designed for, or capable of,

(i) generating 50 megawatts of electricity or more by means of nuclear fission,

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels, or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility;

(b) "nuclear facility" does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy.

(2) "Facility," as defined in 75-20-104~~(7)~~(10) is further defined to include any nuclear facility as defined in subsection (1)(a) of this section."

Section 7. Section 85-1-205, MCA, is amended to read:

"85-1-205. Acquisition of water in ~~Fort-Peck-Reservoir~~ federal reservoirs. The department may acquire water by purchase option or agreement with the federal government from ~~the--Fort-Peck-Reservoir~~ any federal reservoir for the purpose of sale, rent, or distribution for industrial use. In such cases, the department is not required to construct any diversion or appropriation facilities or works, and it may sell, rent, or distribute such water at such rates and under such terms and conditions ~~as-it-considers--appropriate~~ as are established under the provisions of 85-2-311."

Section 8. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. ~~The~~ (1) Except as provided in subsections (2) and (3), the department shall issue a permit if the applicant proves by substantial credible evidence that the following criteria are met:

~~(1)~~(a) there are unappropriated waters in the source of supply:

~~(i)~~(i) at times when the water can be put to the use proposed by the applicant;

~~(ii)~~(ii) in the amount the applicant seeks to appropriate; and

~~(iii)~~(iii) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

~~(2)(b)~~ the rights of a prior appropriator will not be adversely affected;

~~(3)(c)~~ the proposed means of diversion, construction, and operation of the appropriation works are adequate;

~~(4)(d)~~ the proposed use of water is a beneficial use;

~~(5)(e)~~ the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

~~(6) An applicant for an appropriation of 10,000 acre-feet a year or more and 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected;~~

~~(7) except as provided in subsection (6), the applicant proves by substantial credible evidence the criteria listed in subsections (1) through (5).~~

(2) (a) The department may not issue a permit for an appropriation of 5,000 10,000 or more acre-feet of water a year or 7 15 or more cubic feet per second of water unless:

(i) the department makes an affirmative finding that:

(A) the criteria in subsection (1) are met;

(B) the applicant has proven by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected; and

(C) the proposed appropriation is in the public

interest; and

(ii) the legislature affirms the findings pursuant to subsection (2)(c).

(b) In making such a finding, the department shall consider:

(i) existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the economic feasibility of the project;

(iv) the effects on the quantity, quality, and potability of water of existing beneficial uses in the source of supply;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(c) A permit for an appropriation FOR A DIVERSION FOR A CONSUMPTIVE USE of 5,000 10,000 or more acre-feet of water a year or 7 15 or more cubic feet per second of water under subsection (2) may not be issued unless the department

petitions the legislature and the legislature affirms the findings of the department.

(3) An appropriation, diversion, impoundment, restraint, or attempted appropriation, diversion, impoundment, or restraint contrary to the provisions of this section is null and void. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized appropriation, diversion, impoundment, or other restraint. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, or otherwise restrain or control any of the waters within the boundaries of this state except in accordance with this section."

NEW SECTION. Section 9. Repealer. Section 85-1-121, MCA, is repealed.

NEW SECTION. Section 10. Study of water marketing. (1) There is a select committee on water marketing. The select committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The select committee shall meet as often as necessary to complete the study of water marketing required under this section.

(2) The select committee on water marketing shall

undertake a study of the economic, tax, administrative, legal, social, and environmental advantages and disadvantages of water marketing.

(3) The select committee shall study the desirability and feasibility of in-state and out-of-state marketing of limited amounts of water for industrial purposes from existing state and federal reservoirs and from proposed reservoirs with water reservations.

(4) The study must include:

(a) the present and future in-state demands for water for domestic, municipal, agricultural, industrial, recreational, in-stream flows, and other beneficial uses;

(b) how best to encourage a negotiated resolution of the conflicting demands of water users within the Missouri River basin and to discourage litigation and congressional action initiated by lower basin states;

(c) the potential effects of a coal slurry pipeline on coal production and the economic and environmental effects of increased coal production;

(d) the effects of a coal slurry pipeline on the railroad industry and rail rates for noncoal shippers;

(e) alternative structures for a water marketing program;

(f) alternative uses of revenue derived from water marketing; and

(g) the potential ecological effects of the installation and operation of coal slurry pipelines.

(5) The select committee shall solicit the advice of the department of natural resources and conservation, various interested industries, conservation groups, appropriate state and federal agencies, and the public in carrying out its duties under this section.

(6) The environmental quality council shall provide staff assistance to the select committee. The select committee may contract with experts and consultants, in addition to assistance from the environmental quality council staff, in carrying out its duties under this section.

(7) The select committee shall report its findings and recommendations for legislation, if any, to the 49th legislature.

NEW SECTION. Section 11. Appropriation. There is appropriated from the renewable resource development clearance fund account to the environmental quality council for the biennium ending June 30, 1985, $80,000 for the study of water marketing by the select committee on water marketing required by section 10.

NEW SECTION. Section 12. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 13. Effective date. This act is effective on passage and approval.

-End-

MINUTES OF MEETING OF THE
SENATE RULES COMMITTEE
APRIL 6th, 1983

The ninth meeting of the Senate Rules Committee was held in Room 331 of the Capitol Building on April 6th, 1983. Senator Frank W. Hazelbaker, the Chairman of the committee, called the meeting to order at 4:50 P.M. All members were present.

SENATE BILL NO. 428

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING ESTABLISHMENT OF COUNTY WEATHER MODIFICATION AUTHORITIES WITH TERMINATION AFTER 5 YEARS: PROVIDING FOR A LEVY OF UP TO 2 MILLS EACH YEAR: AMENDING SECTION 85-3-104, MCA: AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Chairman Hazelbaker called attention to Amendment No. 8, green copy, which reads as follows:

8. Page 12.
Following: line 18
Insert: "Section 14, Section 85-3-104, MCA, is amended to read: "85-3-104. Nonliability of state and agents for acts of private persons. Nothing in this chapter shall be construed to impose or accept any liability or responsibility on the part of the state, the board, the department, or any state officials or employeed or a county weather authority, its officers or employees, for any weather modification and control activities of any private person or group.""

The question was posed by Senator Turnage as to whether or not the amendment required a 2/3's vote.

Senator Hazelbaker read a memorandum from Lee Heiman, Staff Attorney for the Montana Legislative Council, which is quoted below:

Senator Hazelbaker,

Rep. Schye asked me to look at the house amendments to SB 428 (Weather Modification) that has been sent to the Rules Committee. He has asked me to let you and Senator Etchart know my opinion on whether the amendments involve sovereign immunity.

It is my opinion that sovereign immunity is involved, and under Art. II, Sec. 18, Mont. Const. requires a 2/3's vote of each house.

If you would like further information, please let me know.

(signed) Lee Heiman
Staff Attorney

The committee recommended that the Senate reject the amendments to SB-428 because the House did not give them a 2/3's vote.

HOUSE BILL NO. 899

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE APPOINTMENT QUALIFICATIONS OF MEMBERS OF THE BOARD OF PERSONNEL APPEALS TO REMOVE POTENTIALLY UNCONSTITUTIONAL APPOINTMENT QUALIFICATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Senator Hazelbaker advised that the committee that the bill came over here after the 45th day, about two weeks late, and it came to the Rules Committee in order that it might be acted upon. The question was whether or not it could be accepted by the Senate.

Representative Addy, the sponsor of the bill, testified the bill was merely a result of a 9th Circuit Court Appeals' case, and the bill was held up pending the verdict. Representative Addy requested the Rules Committee to recommend that the Senate suspend the rules so that the bill could be heard by the Senate.

Senator Stephens and Senator Aklestad did not think it was proper for the bill to be accepted inasmuch that it was almost two weeks late in arriving after the 45th day. Senator Towe stated that he felt that the rules should be suspended in order to solve a problem that the bill addressed.

Senator Towe moved that the Rules Committee recommend that the Senate suspend the rules and accept HB No. 899. With Senators Blaylock, Regan and Towe voting Yes and Senators Aklestad, Hazelbaker, Stephens and Turnage voting No, the motion failed.

HOUSE BILL NO. 908

A BILL FOR AN ACT ENTITLED: "AN ACT ADDING CERTAIN PIPELINES TO THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT; PROHIBITING THE ISSUANCE OF PERMITS FOR CERTAIN AMOUNTS OF WATER WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR A STUDY BY A SELECT COMMITTEE OF WATER MARKETING; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 75-20-104, 75-20-216, 75-20-218, 75-20-303, 75-20-304, 75-20-1202, 85-1-205, and 85-2-311, MCA; REPEALING

SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

This bill was brought to the attention of the Rules Committee because Joint Rule 6-3 provides that a bill should be limited to one subject. Secretary of the Senate said he believed that there is more than one subject in the bill.

Speaker of the House, Kemmis, testified that the bill is in his opinion very coherent and to take out any part of it would destroy the coherency of the bill. He felt that all of the parts related to basically one subject. However, he did state that he would be glad to see the "PROVIDING AN APPROPRIATION" stricken from the title and on page 21, lines 17 through 22, the entire section stricken.

Lobbyist James Mockler spoke, advising that he felt that the bill had three distinct subjects.

Jim Mular of the Railroad Brotherhood disagreed with Mockler.

Senator Towe stated that rules say that no bill shall contain more than one subject, and that the subject of this bill is the use of industrial water.

Senator Turnage thought that the bill deserved a hearing and suggested the following amendments to HB 908:

1. Title, lines 5 through 10.
Following: "AN ACT" on line 5
Strike: The remainder of line 5 through "MARKETING" on line 10.
Insert: "PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER"

2. Page 1, line 10.
Strike: "PROVIDING AN APPROPRIATION;"

3. Page 21, lines 17 through 22.
Strike the entire section.

Senator Turnage moved that the bill be reported out of committee as having been properly received for consideration by the Senate and that the bill be referred to the proper committee as amended.

With Senator Aklestad voting No and all other Senators voting Yes, the motion passed.

There being no other business to come before the committee, the meeting was adjourned at 5:30 P.M.

Frank W. Hazelbaker,
Chairman Senate Rules Committee

ROLL CALL

RULES COMMITTEE

48TH LEGISLATIVE SESSION - - 1983 Date 4/6/83

NAME	PRESENT	ABSENT	EXCUSED
Frank Hazelbaker, Chairman (R)	✓		
Gary Aklestad, V.Chairman (R)	✓		
Stan Stephens (R)	✓		
Jean Turnage (R)	✓		
Chet Blaylock (D)	✓		
Pat Regan (D)	✓		
Tom Towe (D)	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

April 7th, 19 83

MR. PRESIDENT

We, your committee on Senate Rules

having had under consideration House Bill No. 908

Respectfully report as follows: That House Bill No. 908

is reported out of committee as having been properly received for consideration by the Senate and that the bill be referred to the proper committee amended as follows:

1. Title, lines 5 through 10.
   Following: "AN ACT" on line 5
   Strike: The remainder of line 5 through "MARKETING' on line 10.

2. Page 1, line 10.
   Strike: "PROVIDING AN APPROPRIATION;"

3. Page 21, lines 17 through 22.
   Strike: Section 11 in its entirety.

DO PASS

Frank W. Hazelbaker

Chairman.

Senator Frank W. Hazelbaker

STATE PUB. CO.
Helena, Mont.

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK AND IRRIGATION
MONTANA STATE CAPITOL

April 13, 1983

The Agriculture, Livestock and Irrigation Committee meeting was called to order on the above date, in Room 325 of the State Capitol Building, at 8:00 a.m., by Chairman Galt.

ROLL CALL: Senators Ochsner, Lane and Aklestad excused. All other members present.

CONSIDERATION OF HOUSE BILL 908: Senator Galt opened the meeting, drawing the committee's attention to the amendment by the Rules Committee which was not included when their committee report was drawn up. He said the Agriculture Committee should adopt this amendment. Exhibit #1.

Senator Lee moved to include the amendment on page 1, line 10, inserting "PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER" following "MARKETING". Motion carried unanimously.

Representative Hal Harper, HD 30, Helena, told the committee the bill reverses a long-standing state policy and puts the state in the process of marketing water. Once you get to market water, you will not reverse it for a long time and you set the process for the future, according to Harper. That is one of the basic purposes of HB 908. He emphasized the South Dakota sale of water to ETSI for 1.4 billion dollars, and the court cases pending for out of state water sales. He said the coal slurry ban is as strong as it can be and there is not going to be any water sold for coal slurry. HB 908 repeals the ban on out of state sale of water and decides which water can be moved out of state and which can't. He said Montana doesn't want to participate in a water war between the states. Any hasty action taken will give more push in Congress. If the laws are changed in Congress, Montana has a lot to lose. Representative Harper handed the committee amendments, Exhibit #2, and ran through the bill pointing out on page 5 the provision for replacement of pipelines. He said the rest are minor changes, until the top of page 16. The bill broadens authority. The amendments, in addition to acquiring water, authorize the state to acquire storage. Most of the other amendments relate to this section. The amendments were worked out in conjunction with the Department of Natural Resources to make them more workable. Amendment #3, the Department is limited by law to acquire water from the government for industrial uses. The other amendments basically state that the State of Montana is going to assume there are unappropriated waters in the federal reservoirs. For that reason, any purchase of water storage will be through the issuance of a permit so that criteria will be checked out. In order to get a permit a person has to prove they are on unappropriated waters, etc. The new language on page 17, 18 and 19 are for appropriations of more than 10,000 acre feet. We need to make sure certain criteria are met. Section 9 is a repealer. The out of state ban is repealed. Section 10 is the "heart" of

the bill. It is a study of water marketing. Representative Harper said he had a whole list of questions that need to be answered before they can draw up a water marketing bill.

PROPONENTS:

James T. Mular, representing the Brotherhood of Railway, Local Engineers and United Transportation, referred to page 20, line 17 and the impact it had on railroad jobs in Montana. He was opposed to coal slurry and didn't feel there was a need for coal slurry. Water is more important, he felt. Once you get one pipeline, you may get 50. There are 6,000 railway employees in the state with 1500 out of work because of economic conditions. He reminded the committee of state lands put in trust by enabling acts. Water is their last resource. He said some amendment should be included to protect land for future use. Water should not be excluded from that. A study that will look at coal slurry is important.

Susan Cottingham, Director, Montana Environmental Center, said this is the most important water resource bill. Their department has studied coal slurry and has supported this bill as the best approach. It is a study bill. There are a number of legal issues involved in the water export laws. They believe the export ban is unconstitutional. This bill repeals that. One provision puts all large pipe lines under the Siting Act. If the State of Montana is going to have control, it should have some jurisdiction. She drew attention to page 20, line 13, item b. All water uses in Montana are based on the 1944 Flood Control Act. Montana should take a leadership role in negotiating a resolution. She considered line 22, e,very important and said it is very important to take a grave look at how the state sets up a system and how the permitting process will work. She urged passage of the bill.

Leo Berry, Department of Natural Resources, was concerned that the export ban in the statutes is unconstitutional. Pages 17 and 18 of the bill is a mechanism to clarify that problem. It is critically important to address that issue, but Montana would not have the authority to exercise that under the current laws. He called attention to 1) the legal challenge of the export laws; 2) South Dakota's interest in marketing Missouri River water. Regarding the study portion of the bill, he didn't think a great deal would be gained, but there is the possibility of setting up the mechanisms. If some of the questions are not answered, we should head in that direction.

Willa Hall, League of Women's Voters, Exhibit #3; and Toni Kelly, Northern Plains Resource Council, Exhibit #4, supported the bill.

Dan Kemmis, HD 94, Missoula, said Montana has, in the past, constructed two means to avoid the loss of water; the coal slurry and the export ban. He said to think of the two as dams Montana has constructed to keep Montana waters here. The situation we now have is that considerable people are looking at the dams and

one or both might give way. The export one is the most important. It could lead to a state like Arizona coming in and taking it, so we had better build another dam. With the export ban, you can't export water from Montana, but once the supreme court says you can, it won't very likely stand up. Any very large appropriations of water will have to go through a review process and have to have legislative approval whether it is used within Montana or out of Montana because you can't discriminate against out of state users. What it does with the slurry ban is that we think it is foolish to ignore but we should do some study. The Senate Rules Committee took the appropriation out of the bill, but money is needed for study. It could be put back in through HB 447.

Mike Fitzgerald, Montana Trade Commission, gave testimony in favor. Exhibit #5.

OPPONENTS:

Jim Mockler, Montana Coal Council, gave the committee Exhibits #6 and #7, saying if they want to amend the Facility Siting Act, they should put a bill in to amend it. Should you decide to amend the act, he had amendments. The bill was done in a large hurry and he referred the committee to pages 17 and 18, lines 2 and 3 where he said you will find there is no 2a and there are two 2 c's. Second, the proposal is not in the public interest. The public interest is a broad term. He asked the committee to note page 23, line 18, referring to consumptive uses and questioned what consumptive uses were. He felt it added one more cloud to the bill. He favored 85-1-121. He said if you read Section 3, page 19, it goes through the same legislative process for the export or any use of water. Line 12 - if you want to build a stock reservoir you have to go through a legislative process. Then you have to go back to the legislature and they will tell you if you can build it, according to Mockler. He did not think the bill solved any problems and called it a horrendous peice of garbage. He said he would recommend the study if there was nothing else.

Ward Shanahan, attorney, appearing on his own right, said he has been working with the Facility Siting Act and this puts another segment of industry under the Act. This particular bill is just a third ban so a project can be held up before it can be built. He agreed with Mockler's amendments. He also supported the water study.

COMMITTEE QUESTIONS:

Graham: South Dakota has a lawsuit on a proposed sale of water. If they win the law suits and can go ahead with the sale and we are sitting here studying, what will happen. If we don't have any machinery set up to sell water, could we lose the water?

Berry: The down stream states, if they win the law suits, can appropriate for any water. If they won they would persue for

coal slurry or other purposes. If they put it to use we would then be obligated to pass that water down stream. That is why the Department supported some type of mechanism.

Mockler: If you pass this bill you will still have to wait for another legislature to do anything with your water.

Lee: How much of an appropriation was taken out of this?

Harper: $80,000 should be put in HB 447 for the study.

Galt: What did Wyoming finally come up with.

Harper: They passed two bills and the governor vetoed both so they are back where they started.

Galt: It would prohibit an agricultural person from getting this?

Berry said he couldn't immagine that.

Galt, referring to page 19, line 9 on through the section, asked if that applied just to 10,000 acre feet or what. Berry answered only those over 10,000 acre feet would have to go to the group.

Representative Harper asked the committee to read the whole sentence to the end.

In closing, Representative Harper said the decision we need to make is are we going to market water in Montana and how are we going to do this? What is the water in Montana? How do you sign a 40 year contract to that water? Can the state legally sell water? South Dakota tried; they are now in court. We must think about the effect of our action on congressional action. What is the impact on jobs? We only have one rail line. A large percent of business done by the railroad is coal business. Competition is only applying to coal and you can't reverse the softness of the coal market. What are the effects on the future potential of water? If you don't have water, a lot of Montana land is useless. What are the drought cycles? One point he wished to make was the magnitude of the decision we have to make here. The bill is pretty much self explanatory. What is the public interest criteria? One of the purposes is to put the legislature in a decision making position. If the State of Montana is going to enter into water marketing, it is essential the legislature be involved. As to consumptive uses not being defined - there is not much question. The last amendment points out some of the hydro projects will not be covered and considered for consumptive uses. He was surprised the opponents supported the study but not the remaining part. He said it was the best can of garbage we have going this session.

Senator Galt said he would try to get the committee together for executive action the following morning, as many members were in Finance and Claims at the present time.

There being no further business, the meeting adjourned.

Jack E. Galt, Chairman

ROLL CALL

AGRICULTURE COMMITTEE

48th LEGISLATIVE SESSION - - 19 83 Date 4-13-83

NAME	PRESENT	ABSENT	EXCUSED
GALT, Jack E.	✓		
KOLSTAD, Allen C.	✓		
AKLESTAD, Gary C.	✓		
OCHSNER, J. Donald	✓		
GRAHAM, Carroll	✓		
BOYLAN, Paul F.			✓
CONOVER, Max	✓		
LANE, Leo			✓
LEE, Gary	✓		

Each day attach to minutes.

DATE 4-13-83

COMMITTEE ON Agriculture BILL NO. HB 908

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Check One: Oppose
Robert Bachini	Rep Dist #7	NO amend ✓	
Willa Hall	League of Women Voters	✓	
Jim Mockler	MT. Coal Council		✓
Sam Smith	Bro. Ml. Wy Fed	✓	
C.L. Burr Jr	BLE	✓	
R.R. West	UTU	✓	
Toni Keller	NPRC	✓	
Susan Cottingham	MEIC	✓	
Leo Berry	DNRC	✓	
James Tutwiler	Rwy Pro BRAC	✓	
Lisa Lewis	Senate Page	✓	
Don Reed	MEIC	✓	
Deborah Schmidt	EQC X (3 phone 5442)		

(Please leave prepared statement with Secretary)

DATE _____

COMMITTEE ON _____ BILL NO. _____

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Check One: Oppose
Marc Eddleston	NPRC	—	
Tim Stearns	NARC	✓	
Charles Landman	METC	X	
Dane Kemmis	District 94 - Mgla	✓	
[illegible]	Mt. Trade Assn.	✓	
Sandra [illegible]	Powder River Pipeline		✓

(Please leave prepared statement with Secretary)

EX #1
Ag 4-13-83

AMENDMENT TO HB 908

(Senate Rules Committee intended to adopt this amendment, as per attached minutes, but inadvertently omitted it from the Committee report.)

1. Page 1, line 10.
Following: "~~MARKETING~~"
Insert: "PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER"

SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

This bill was brought to the attention of the Rules Committee because Joint Rule 6-3 provides that a bill should be limited to one subject. Secretary of the Senate said he believed that there is more than one subject in the bill.

Speaker of the House, Kemmis, testified that the bill is in his opinion very coherent and to take out any part of it would destroy the coherency of the bill. He felt that all of the parts related to basically one subject. However, he did state that he would be glad to see the "PROVIDING AN APPROPRIATION" stricken from the title and on page 21, lines 17 through 22, the entire section stricken.

Lobbyist James Mockler spoke, advising that he felt that the bill had three distinct subjects.

Jim Mular of the Railroad Brotherhood disagreed with Mockler.

Senator Towe stated that rules say that no bill shall contain more than one subject, and that the subject of this bill is the use of industrial water.

Senator Turnage thought that the bill deserved a hearing and suggested the following amendments to HB 908:

1. Title, lines 5 through 10.
Following: "AN ACT" on line 5
Strike: The remainder of line 5 through "MARKETING" on line 10.
Insert: "PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER"

2. Page 1, line 10.
Strike: "PROVIDING AN APPROPRIATION;"

3. Page 21, lines 17 through 22.
Strike the entire section.

Senator Turnage moved that the bill be reported out of committee as having been properly received for consideration by the Senate and that the bill be referred to the proper committee as amended.

With Senator Aklestad voting No and all other Senators voting Yes, the motion passed.

PURI ANN

April 7th, 19 83
Bill Clerk

MR. PRESIDENT

We, your committee on Senate Rules

having had under consideration House Bill No. 908

Respectfully report as follows: That House Bill No. 908

is reported out of committee as having been properly received for consideration by the Senate and that the bill be referred to the proper committee amended as follows:

1. Title, lines 5 through 10.
   Following: "AN ACT" on line 5
   Strike: The remainder of line 5 through "MARKETING' on line 10.

2. Page 1, line 10.
   Strike: "PROVIDING AN APPROPRIATION;"

3. Page 21, lines 17 through 22.
   Strike: Section 11 in its entirety.

~~DO PASS~~

Chairman.

Senator Frank W. Haralbaker

STATE PUB. CO.
Helena, Mont.

EX # 2
4-13-83

PROPOSED AMENDMENTS TO HB 908

1. Page 1, line 10.
Following: "~~MARKETING~~"
Insert: "PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER"

2. Page 16, line 2.
Following: "reservoirs."
Insert: "(1)"
Following: "water"
Insert: "or water storage"

3. Page 16, line 5.
Following: "industrial"
Strike: "use"
Insert: "and other uses"

4. Page 16, line 10.
Following: line 9
Strike: "as are established under the provisions of 85-2-311"
Insert: "as it considers appropriate provided that, if a permit as defined in subsection (9) of 85-2-102 is required, the conditions required under 85-2-311 are met"

5. Page 16, line 11.
Following: line 10
Insert: "(2) Until a final decree has been issued pursuant to 85-2-234 concerning the waters in a federal reservoir, the department must exercise the authority granted to it under subsection (1) only in conjunction with the issuance of a permit pursuant to 85-2-311 for any specific sale, rent, or distribution of water from a federal reservoir."

6. Page 18, line 2.
Following: "findings"
Strike: "pursuant to"
Insert: "whenever required by"

7. Page 19, line 2.
Following: "department"
Insert: ", except that for purposes of this subsection, the use of water for the purposes of development of hydroelectric power is not a consumptive use"

Ex #3

WITNESS STATEMENT

Name Willa Hall Date 5-13-83

Address Helena Support ? X 908

Representing League of Women Voter Oppose ?

Which Bill ? HB 908 Amend ?

Comments:

Because of the interest & questions on Water marketing and to clear up the constitutional law on water exporting HB. 908 is very important The public needs to be involved in the study & important decisions made relating to water.

Please leave prepared statement with the committee secretary.

NORTHERN PLAINS RESOURCE COUNCIL

Field Office
Box 858
Helena, MT 59624
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CHAIRMAN GALT AND MEMBERS OF THE SENATE AGRICULTURE COMMITTEE MY NAME IS TONI KELLEY, MY HUSBAND AND I RANCH IN THE SOUTH DEER LODGE VALLEY. I AM CURRENTLY CHAIRPERSON OF THE NORTHERN PLAINS RESOURCE COUNCIL. WE SUPPORT HB 903.

AGRICULTURE IS VITALLY DEPENDENT ON WATER. THIS BILL WILL HELP ENSURE THAT THIS VITAL RESOURCE IS WISELY USED AND PROTECTED. THIS BILL AFFORDS MONTANA THE ABILITY TO PROTECT ITS WATER RESOURCES, WHILE WE EXAMINE THE ISSUES SURROUNDING WATER MARKETING AND EXPLORE THE RAMIFICATIONS OF REPEALING THE CURRENT BAN ON THE USE OF MONTANA WATER IN COAL SLURRY PIPELINES, SUCH AS RAIL SHIPPING RATES AND COAL PRODUCTION.

IT PLACES LARGE WATER AND SLURRY PIPELINES UNDER THE MONTANA MAJOR FACILITY SITING ACT. THE SITING ACT ALLOWS FOR ORDERLY AND THOROUGH REVIEW OF MAJOR DEVELOPMENT PROJECTS AND SEEKS TO MINIMIZE THE ADVERSE IMPACTS OF SUCH PROJECTS. THE SITING ACT INCLUDES THE LANDOWNERS AFFECTED BY SUCH PROJECTS IN THE EARLY STAGES OF THE SITING AND ROUTING PROCESS. IT CONSIDERS REASONABLE ALTERNATIVES SO THE VARIOUS OPTIONS CAN BE COMPARED.

HOUSE BILL 908 REPEALS THE CURRENT LAW REQUIRING LEGISLATIVE APPROVAL TO EXPORT MONTANA WATER SINCE IT IS BELIEVED TO BE UNCONSTITUTIONAL. THIS LAW IS REPLACED WITH IMPROVED PUBLIC INTEREST criteria ADDED TO THE WATER USE ACT AND REQUIRES LEGISLATIVE APPROVAL OF LARGE APPROPRIATIONS FOR CONSUMPTIVE USES. THESE WILL ENSURE THAT CURRENT USERS WILL NOT BE HARMED AND FUTURE AGRICULTURAL NEEDS WILL BE PROTECTED.

HOUSE BILL 908 WILL ALLOW THE STATE TO AQUIRE WATER OR WATER STORAGE IN OTHER FEDERAL RESERVOIRS ASIDE FROM FORT PECK. WITH THE PROPOSED AMENDMENTS AGRICULTURE WILL HAVE INCREASED ACCESS TO FEDERAL WATER. THIS IS IMPORTANT ON THE LOWER YELLOWSTONE RIVER TO IRRIGATORS, SINCE THEY ARE SO DEPENDENT ON WATER STORED IN YELLOWTAIL RESERVOIR TO ENSURE ADEQUATE SUPPLIES ESPECIALLY IN LOW FLOW YEARS.

ASIDE FROM THE STUDY OF THE LEGAL ASPECTS SURROUNDING WATER MARKETING AND THE IMPACTS OF COAL SLURRY PIPELINES, HOUSE BILL 903 SEEKS TO AVOID LITIGATION OR CONGRESSIONAL ACTION BY DOWNSTREAM STATES TRYING TO PREVENT UPSTREAM WATER DEVELOPMENT. CURRENTLY, SOUTH DAKOTA IS IN COURT OVER ITS SALE TO THE ETSI PIPELINE COMPANY: THE MISSOURI BASIN WATER USERS ASSOCIATION IS SEEKING FEDERAL OVER-SIGHT OF UPSTREAM WATER DEVELOPMENTS AND NEBRASKA IS SEEKING DIALOGUE WITH UPSTREAM STATES. HOUSE BILL 903 SEEKS TO AVOID THE WESTERN WATER WAR NOW BREWING: MONTANA CAN TAKE A LEADING ROLE IN PREVENTING IT.

THIS BILL PROVIDES AN OPEN FORUM TO DISCUSS WATER MARKETING AND THE SURROUNDING ISSUES, WHILE PROTECTING LANDOWNERS BEING CROSSED BY LARGE PIPELINES AND GIVING MONTANA WATER USERS THE PROTECTION NECESSARY TO CHART A SOUND COURSE FOR WATER DEVELOPMENT.

I URGE YOUR SUPPORT FOR THIS BILL.

THANK YOU.

Ex #5
Ag

TESTIMONY

IN SUPPORT OF HB 908 (AMENDED)

(Water Marketing Study)

BY
Mike Fitzgerald
President
Montana Trade Commission
Suite 612 - Power Building
Helena, Montana 59601

BEFORE THE
SENATE AGRICULTURE COMMITTEE

April 13, 1983

According to MCA 85-2-104, water may not be appropriated for coal slurry because, "The use of water for slurry transport of coal is not a beneficial use of water."

This legislation was passed in 1973 primarily because Montanans felt threatened by the large requests for water by industry, up to 1 million acre feet, primarily from the Yellowstone River Basin.,

- Those demands for water and projected coal development never materialized. Montana coal development, projected in the mid 1970's to be 270 million tons annually by the year 2000, has not yet reached 35 million tons per year and will not likely be 100 million tons annually by the year 2000.

- Montana's 1982 coal production was 32,160,075 tons. 1982 coal severance taxes totaled $86,186,845.61.

- Wyoming's 1982 coal production was 104 million tons. Their 1982 coal severance taxes totaled over $152 million.

- Wyoming's coal production is projected to be about 130 million tons annually by 1986.

- Montana's coal production will not likely reach 50 million tons per year by 1990. Our coal production may not reach 40 million tons per year by 1990.

- To increase Montana's coal production, Montana Coal Producers have to improve the delivered price per ton per million BTU's.

- There are only a few ways available to achieve a lower delivered price per million BTU's:

  A. Lower taxes on the coal (HB 706 would do this).
  B. Increase the heating value of the coal at the mine (Coal Benefaction - SB 264 provides an incentive to do this).
  C. Lower the transportation rate by providing an alternative, competitive mode of transportation, ie water slurry.

- Montana now has one railroad serving the largest coal deposit in the U.S. This is unacceptable to any and all potential Pacific Basin Coal Customers.

- Coal slurry is the only competitive form of transportation that is economically feasible in Montana. Wyoming has 3 major railroads serving their coal fields and their legislature is considering 3 separate coal slurry proposals.

- In 1980 the U.S. Department of Energy contracted with CFI, Inc. an economic research firm, to study "The Potential Energy and Economic Impact s of Coal Slurry Pipelines".

- The main conclusion of the CFI study is "...The greatest savings from coal slurry pipelines may be the indirect savings resulting from increased conpetition..."

- Table 4 below is from the CFI Study, page 156. The entire study is included in my testimony and will be left with the Secretary of the Committee:

TABLE 4

COMPARISON OF SLURRY AND RAIL COSTS

(1980 $/Ton)

	High Rail						Low Rail					
	High Slurry			Low Slurry			High Slurry			Low Slurry		
	Rail	Slurry	Difference	Rail	Slurry	Difference	Rail	Slurry	Difference	Rail	Slurry	Difference
Arizona to Nevada	[b]	5.73		[b]	5.73		[b]	5.73		[b]	5.73	
Wyoming to Illinois	19.55	12.57	6.98	19.55	7.54	12.01	15.64	12.57	3.07	15.64	7.54	8.10
Illinois to Texas[d]	12.75	13.50	(0.75)[c]	12.75	7.94	4.81	10.20	13.50	(3.30)[c]	10.20	7.94	2.26
Wyoming to Texas	17.04	12.70	4.34	17.04	7.01	10.03	13.63	12.70	0.93	13.63	7.01	6.62
West Montana to Minnesota	11.20	9.89	1.31	11.20	5.59	5.61	8.96	9.89	(0.93)[c]	8.96	5.59	3.37
West Montana to Wisconsin	17.10	13.08	4.02	17.10	7.41	9.69	13.68	13.08	0.60	13.68	7.41	6.27
East Kentucky to N&S Carolina	9.93	8.98	0.95	9.93	5.42	4.51	7.95	8.98	(1.03)[c]	7.95	5.42	2.53
Wyoming to Ark/Okla/Louisiana	17.21	12.07	5.14	17.21	6.74	10.47	13.77	12.07	1.70	13.77	6.74	7.03
Wyoming to Wash/Oregon	19.36	17.11	2.25	19.36	9.73	9.63	15.49	17.11	(1.62)[c]	15.49	9.73	5.76
Utah to Nevada	9.60	22.68	(13.08)[c]	9.60	13.60	(4.00)[c]	7.68	22.68	(15.00)[c]	7.68	13.60	(5.92)[c]
South Colorado to Texas	13.14	12.54	0.60	13.14	7.59	5.55	10.51	12.54	(2.03)[b]	10.51	7.59	2.92
New Mexico to Texas	17.21	12.54	4.67	17.21	7.59	9.62	13.77	12.54	1.23	13.77	7.59	6.18
Illinois to S. Florida	20.50	17.34	3.16	20.50	9.94	10.56	16.40	17.34	(0.94)[c]	16.40	9.94	6.46

[a]The CEUM analysis uses generalized origin-destination pairs and cost functions and as a consequence, those pipelines modeled in the CEUM are not necessarily comparable to specific projects.

[b]Since the Black Mesa Pipeline is currently in operation it does not compete with a rail link.

[c]Indicates slurry price is higher than rail price.

[d]The CEUM does not include a rail link between Illinois and Texas. The rail cost shown represents what the cost would be, based on our coefficients, if there was a rail link for this route.

- There are developing markets in the Pacific Basin for western U.S. steam coal. By 1990 these markets may reach upwards of 60 million tons annually.

- Montana Coal Producers could supply up to 15 million tons annually to Asian customers by 1990 and up to 25 million tons annually by the year 2000.

- However, our Montana coal producers are competing with other Rocky Mountain and Alaska coal producers as well as, Canada, South Africa, Australia, the Soviet Union and in the not too distant future, China.

- At the present time Montana coal is not a serious contender for growing steam coal markets in Japan, Taiwan, Korea and other Asian markets because our coal is relatively low in heating value and we have no competitive transportation which the Japanese believe to be an intolerable situation that they will not committ to.

- If as indicated by the CFI Study, Coal Slurry Pipelines could deliver coal to a western U.S. port 10% to 20% cheaper than the railroad, Montana coal producers could become competitive in the growing Pacific Basin Steam Coal Markets.

- Following are two hypothetical scenarios of potential tax and water revenues that could accrue to Montana State and Local governments if we have competitive coal transportation:

HYPOTHETICAL CASE

Potential revenues to the state of Montana from sales of water and taxes from additional sales of Montana coal:

I. Potential State and Local revenues from 15 million additional tons of coal annually at $10.00 per ton Contract Sales Price (CSP):

A. Severance Tax, Gross Proceeds Tax and Resource Indemnity Tax.(1)

15 million tons
x $10.00 per ton (2)
= $150,000,000 Annually
x 35% (combined taxes)
= $ 52,500,000 State & Local Tax Revenues Annually

B. Water Revenues
15 million tons annual coal production would require about 500 acre feet of water per million tons of coal, or 7,500 acre feet total annually at $450.00 per acre foot.(3) Potential revenues from water sales to the State of Montana to slurry 15 million tons of coal annually equals $3,375,000 annually.

C. Total potential taxes and water revenues to State and Local Governments:

- Severance, Gross Proceeds and Resource Indemity Taxes
  = $ 52,500,000 Annually
- 7,500 acre feet of water
  = $ 3,375,000 Annually

Total- $ 55,875,000 Annually

---

1) Montana Production Taxes:

Severance @	30.%
Gross Proceeds @	4.62%
Resource Indemnity Trust @	.5%
	35.12%

2) $10.00 per ton is the medium range for Montana Coal, (8600 BTU's) 1983. Some is more expensive, some is less, depending on contract amount, location and quality of the coal.

3) $450.00 per acre foot of water is the amount in the ETSI contract with South Dakota.

II. Potential State and Local revenues from 25 million additional new tons of coal annually at $10.00 per ton Contract Sales Price (CSP):

A. Severance Taxes, Gross Proceeds and Resource Indemnity Taxes.

= 25 million tons
x $10.00 per ton
= $250,000,000 Annually
x 35% (combined taxes)
= $ 87,500,000 Annually to State & Local Governments

B. Water Revenues:

25 million tons of coal would require about 500 acre feet of water per million tons of coal or about 12,500 acre feet annually at $450.00 per acre foot equals $5,625,000 annual revenues from water sales.

C. Total potential taxes and water revenues to State and Local governments:

- Severance, Gross Proceeds and Resource Indemnity Taxes

  = $ 87,500,000 Annually

- 12,500 acre feet of water annually

  = $ 5,625,000 Annually

Total- $ 93,125,000 Annually to State & Local Governments

- Does Montana have sufficient water for coal slurry without jeopardizing water supplies for agriculture, residents, and communities? According to the DNRC Water Sciences Bureau: "Montana has water available for industrial purposes in the Missouri and Yellowstone River Basins. As much as 500,000 acre feet is available from Yellow Tail Reservoir. 200,000 - 300,000 acre feet is reserved for possible industrial use in off-streem reservoirs in the Yellowstone River Basin. An additional 300,000 feet of water can be marketed from Fort Peck Reservoir for industrial purposes. The amount of water still available for industrial development on the Missouri mainstream below Fort Peck Reservoir is unknown, but could be as large as 1,000,000 acre feet per year." (1)

- Montana has already been pre-empted by South Dakota's water contract with Energy Transportation System, Inc. (ETSI). Which provides South Dakota state government $9 million per year, $1.45 billion over the next 50 years for 50,000 acre feet of water annually from the Oahe Reservoir. That is 50,000 acre feet of Montana's out-flow which S.D. is selling to ETSI! If the contract for water is not used, ETSI will pay South Dakota $45 million for what is originally Montana water!

- In October 1982, after two years of comprehensive study by the Water Resources Division of the Department of Natural Resources completed, A WATER PROTECTION STRATEGY FOR MONTANA. This study is properly refered to as the, "Use It Or Loose It," study.

- If you have not, I recommend that you refer to this document for the facts about this issue. The facts present an overwhelming case in support of a state industrial water marketing plan for coal slurry.

- This seems to be the only possible way to pay for other state water development projects that will primarily benefit agriculture.

- Had the Montana Economic Development Project Steering Committee had this information available last summer, I believe we would have overwhelmingly recommended a water marketing program be expedited rather than a study of the issue, which has clearly been comprehensively analyzed already by DNR.

- Finally, but perhaps most importantly, Indian Tribes of Montana are entitled to a reserved water right as ruled by the U.S. Supreme Court in the 1908 Winter's Case on the Fort Belnap Reservation in Montana. The Crow Tribe is interested in industrial water from Yellowtail Reservoir; the Northern Cheyenne Tribe from the Tongue River Reservior; and the Fort Peck Tribe from Fort Peck Reservior. A draft compact has

(1) Coal Slurry Issues Paper - Autumn, 1982
DNR, Water Sciences Bureau, Rich Moy, Bureau Chief (449-2872)

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(1) Coal Slurry Issues Paper - Autumn, 1982
DNR, Water Sciences Bureau, Rich Moy, Bureau Chief (449-2872)

been negotiated between the Reserved Water Rights Compact Commission representing Montana and the Fort Peck Tribes which would allow the Fort peck tribes to market at least 480,000 acre feet per year under fifty year agreements, on and off the reservation for industrial purposes from Fort Peck Reservior. The Bureau of Reclamation and the Corps of Engineers only identified 1,000,000 acre feet per year of surplus water for forty years for industrial purposes from the Missouri River System: 400,000 acre feet per year in South Dakota; 400,000 acre feet per year in North Dakota and 300,000 acre feet per year from Fort Peck Reservior in Montana. The State must act now in setting up water marketing legislation before the Indian tribes of Montana, the federal government and the lower basin states (i.e. Iowa, Missouri, Nebraska) prevent Montana from marketing her water.

- Without water marketing revenues, Montana Agriculture and other potential users will not be able to develop water projects and will not be able to compete with the downstream states in an interstate apportionment. Montana's farmers and ranchers will be the big losers.

- I recommend that you approve HB 908 in order to clarify the facts and hopefully, develop recommendations for industrial water marketing. I also recommend that references in HB 908 to the Major Facility Siting Act, be excluded. To provide that coal slurry pipelines come under the MFSA predetermines the outcome of the study.

Thank you.

management of the state's water resources, and its provisions are to be given a liberal interpretation.

History: En. Sec. 66, Ch. 146, L. 1909; re-en. Sec. 7262, R.C.M. 1921; re-en. Sec. 7262, R.C.M. 1935; amd. Sec. 38, Ch. 460, L. 1977; R.C.M. 1947, 89-2109.

85-1-104 through 85-1-110 reserved.

85-1-111. Public ways. Navigable waters and all streams of sufficient capacity to transport the products of the country are public ways for the purposes of navigation and such transportation. This section shall not be construed so as to affect or impair, in any manner, any rights acquired prior to July 1, 1901, by any person, association of persons, or corporation. The right of any person, association of persons, or corporation to take and use any water, as now provided by law, from any stream or streams for the purpose of irrigation or any beneficial or industrial pursuit shall not be abridged.

History: En. Sec. 2570, Pol. C. 1895; amd. Sec. 1, p. 126, L. 1901; re-en. Sec. 1326, Rev. C. 1907; re-en. Sec. 1604, R.C.M. 1921; Cal. Pol. C. Sec. 2348; re-en. Sec. 1604, R.C.M. 1935; R.C.M. 1947, 89-501.

85-1-112. Navigable waters. (1) All lakes wholly or partly within this state which have been meandered and returned as navigable by the surveyors employed by the government of the United States and all lakes which are navigable in fact are hereby declared to be navigable and public waters, and all persons shall have the same rights therein and thereto that they have in and to any other navigable or public waters.

(2) All rivers and streams which have been meandered and returned as navigable by the surveyors employed by the government of the United States and all rivers and streams which are navigable in fact are hereby declared navigable.

History: En. Secs. 1, 2, Ch. 95, L. 1933; re-en. Secs. 3717.1, 3717.2, R.C.M. 1935; R.C.M. 1947, 26-336, 26-337.

85-1-113 through 85-1-120 reserved.

85-1-121. Out-of-state use of water. None of the waters in the state of Montana shall ever be appropriated, diverted, impounded, or otherwise restrained or controlled while within the state for use outside the boundaries thereof, except pursuant to a petition to and an act of the legislature of the state of Montana permitting such action. Any appropriation, diversion, impounding, restraining, or attempted appropriation, diversion, impounding, or restraining contrary to the provisions of this section shall be null and void. All officers, agents, agencies, and employees of the state are prohibited from knowingly permitting, aiding, or assisting in any manner such unauthorized appropriation, diversion, impounding, or other restraint. It shall be unlawful for any person, persons, or corporation, directly or indirectly, personally or through agents, officers, or employees, either to attempt to so appropriate, divert, impound, or otherwise restrain or control any of the waters within the boundaries of this state for use outside thereof, except in accordance with the terms of this section.

History: En. Sec. 1, Ch. 220, L. 1921; re-en. Sec. 7135, R.C.M. 1921; re-en. Sec. 7135, R.C.M. 1935; R.C.M. 1947, 89-846.

Ex # 6
435 AG 4-13-83

85-1-122. Clark Fo
be impounded or restrair
exceeding 25 miles from
on said river in the state
nership, or corporation a
Any present or future ap
of Montana for irrigation
ity over water for power
History: En. Sec. 1, Ch. 3, L.

85-1-201. Rules of
as necessary or expedien
ter.
History: En. 89-102.1 by Sec.

85-1-202. Departm
department may not acq
interest therein and ma
(except rights of access f
nance of works) or mortg
of in any manner water
prior approval of the bo
be constructed or contra
prior approval of the boa
or water user associatio
works without prior appr
History: En. Sec. 2, Ch. 279,

85-1-203. State w
any source reliable info
prepare therefrom a c
resources of the state. I
duct studies; adopt stud
including federal, regio
employ other competen
and hold public hearings
be given an opportunity
(2) The department
adopt and from time t
coordinated multiple-us
plan". The state water
these sections correspon
water plan shall set out
ment, and utilization o
effective means by whic
fit of the people, with d

Ex #7
Ag 4-13-83

Suggested Amendments to HB 908
Second Reading Copy

Page 2, line 13: Following: "compatibility"
Insert: "or, in the case of a utility, a certificate of environmental compatibility"

Page 4, line 1: Following: "facilities"
Insert: "located within the state of Montana"

Page 5, line 25: Following: "person"
Strike: All language through page 6, line 3
Insert: "furnishing or producing energy within Montana and subject to rate of return or rate regulation by a state or federal regulatory body or protected from competition through a guaranteed monopoly of service in a given service area."

Page 8, line 17: Following: "in"
Strike: "(b)"
Insert: "(a)"

Page 8, line 18: Following: "(10)"
Insert: "which is not a utility facility or"

Page 18, line 25: Following: "issued"
Insert: "on applications for permits filed with the department after the effective date of this act"

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK AND IRRIGATION
MONTANA STATE SENATE

April 14, 1983

The Agriculture, Livestock and Irrigation Committee meeting was called to order on the above date by Chairman Galt, in Room 325 of the State Capitol Building at 7:30 a.m.

ROLL CALL: All members present.

DISPOSITION OF HB 908: Representative Harper's amendments were presented to the committee. Exhibit #1.

Mr. Mockler thought the third amendment went further than it was intended to go.

Don MacIntyre, Department of Natural Resources, said it refers to the permitting sections of the law and not this part of the bill. It says that when they comply with the permitting section, (part 3 is the permitting section of the code), it is now extended to any federal reservoir.

Senator Kolstad moved Representative Harper's amendments #1, #2, and #3, Exhibit #1. Motion carried unanimously.

Mr. Mockler's amendments were presented. Exhibit #2.

Senator Galt said it takes out the Facility Siting Act and leaves in the 10,000 acre feet or better to come before the legislature. The amendments leave the study which is the "guts" of the bill.

Senator Lee made a motion to place at the end of the bill, on page 22, line 5, "Everything in this study will terminate July, 1985." He felt that, in 1985, they could come in with new language so the study would not go on forever. He felt the study committee could approach the next legislature with their findings and we would be in better shape to write a practical bill. If it was an agreement to a water sale, you could put language into the contract regarding the sale. This also deals with sale of new water from out of state.

Roll call vote on Senator Lee's motion showed 5 Yes, 3 No and one abstaining. Motion carried.

Senator Lee moved to accept Mr. Mockler's amendments, numbers 4 through 8 and numbers 10 through 14, shown on Exhibit #2. Motion carried unanimously.

Senator Kolstad moved HB 908, as amended, BE CONCURRED IN. Motion carried. For the record Senators Ochsner and Conover voted No. Senator Lee will carry the bill.

There being no further business, the meeting adjourned.

Jack Galt

SENATE COMMITTEE AGRICULTURE

Date 4-14-83 H Bill No. 908 Time 7:53

NAME	YES	NO
SENATOR KOLSTAD	✓	✓
SENATOR AKLESTAD		
SENATOR BOYLAN	✓	✓
SENATOR CONOVER		✓
SENATOR GRAHAM	✓	
SENATOR LANE		✓
SENATOR LEE	✓	
SENATOR OCHSNER	✓	
SENATOR GALT, Chairman		✓
	5	3 absent.

Rita Tenneson
Secretary

Jack E. Galt
Chairman

Motion: The study will terminate on July 1985 + Title also will conform to the amendment

(include enough information on motion--put with yellow copy of committee report.)

Ex #1
ag 4-14-83

Proposed Amendments to HB 908 (Rep. Harper)

1. Page 16, line 2.
Following: "."
Insert: "(1)"
Following: "water"
Insert: "or water storage"

2. Page 16, line 5.
Following: "industrial"
Strike: "use"
Insert: "and other uses"

3. Page 16, line 10.
Strike: "as" through "85-2-311"
Insert: "as it considers appropriate, except as provided in subsection (2).
(2) Until a final decree has been issued pursuant to 85-2-234 concerning the waters in a federal reservoir, the department may sell, rent, or distribute such water only after a permit has been issued to an applicant for purchase, rent, or distribution of water in accordance with part 3 of this chapter"

4. Page 18, line 2.
Following: "findings"
Strike: "pursuant to"
Insert: "whenever required by"

5. Page 19, line 2.
Following: "department"
Insert: ", except that for purposes of this subsection, the use of water for the purposes of development of hydroelectric power is not a consumptive use"

Exhibit #2
Mockler Amends

Amendments to HB 908

1. Page 1, line 5: Following "ENTITLED:"
Delete balance of line

2. Page 1, line 6: Delete in entirety

3. Page 1, line 7: Delete "MAJOR FACILITY SITING ACT;"

NO

4. Page 1, line 11: Following "SECTIONS"
Delete balance of line

5. Page 1, line 12: Delete "75-20-304, 75-20-1202,"

6. Page 1, lines 17-25: Delete in entirety

7. Pages 2-14: Delete in entirety

8. Page 15, lines 1-24: Delete in entirety

9. Page 16, line 13: Following "in"
Delete "subsections (2) and (3)"
Insert "subsection (2)"

NO

10. Page 17, lines 10-25: Delete in entirety

11. Page 18: Delete in entirety

12. Page 19, lines 1-2: Delete in entirety

13. Page 19, line 3: Delete "(3)"
Insert "(2) permits for the use of water in excess of 10,000 or more acre feet per year or 15 or more cubic feet per second issued on applications for permits filed with the department of natural resources and conservation after the effective date of this act shall not be valid until approved by the legislature."

14. Page 19, line 12: Following "control"
Delete "any of the"

HOUSE BILL NO. 908

INTRODUCED BY HARPER, BARDANOUVE, IVERSON, VINCENT, KEMMIS, ASAY, FABREGA

A BILL FOR AN ACT ENTITLED: ~~"AN ACT ADDING CERTAIN PIPELINES TO THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT;~~ PROHIBITING THE ISSUANCE OF PERMITS FOR CERTAIN AMOUNTS OF WATER WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR A STUDY BY A SELECT COMMITTEE OF WATER MARKETING; [PROVIDING AN APPROPRIATION;] AMENDING SECTIONS ~~75-20-104, 75-20-216, 75-20-218, 75-20-303, 75-20-304, 75-20-1202,~~ 85-1-205, AND 85-2-311, MCA; REPEALING SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility

THIRD READING

employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries, and facilities and associated facilities designed for or capable of producing, gathering, processing, transmitting, transporting, or distributing crude oil or natural gas, and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other

facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of $10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of $10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $10 million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(c) each pipeline and associated facilities designed

for or capable of transporting gas (except for natural gas), water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection (10)(a) of this section;

~~(d)~~ each pipeline greater than 20 inches in diameter or AND 30 miles in length and associated facilities designed AND INTENDED for ~~or capable of~~ transporting water or using water as a transport medium;

~~(e)(i)~~ any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $750,000;

~~(ii)~~ any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(13) "Utility" means any person engaged in any aspect

of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 2. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies. (1) After receipt of an application, the department and department of health shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and list the deficiencies therein; and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department and department of health shall use, to the extent

they consider applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health shall within 1 year following the date of acceptance of an application and the board of health or department of health, if applicable, within an additional 6 months issue any decision, opinion, order, certification, or permit required under the laws administered by the department of health or the board of health and this chapter. The department of health and the board of health shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department of health and board of health administer, and any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the determinations made under the laws administered by the department of health and the board of health. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). The decision,

opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board and shall be utilized as part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in (a) and ~~(d)~~ (e) of 75-20-104(10) and for a facility as defined in (b) ~~and (c) through (d)~~ of 75-20-104(10) which is more than 30 miles in length and within 1 year for a facility as defined in (b) ~~and (c) through (d)~~ of 75-20-104(10) which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities,

the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of highways; commerce; fish, wildlife, and parks; state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 3. Section 75-20-218, MCA, is amended to read:

"75-20-218. Hearing date -- location -- department to act as staff -- hearings to be held jointly. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. ~~Except for those hearings involving applications submitted for facilities as defined in (b) and (c) of 75-20-104(10), certification~~ Certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion thereof is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department of health and the board of health shall hold any required permit hearings required under laws administered by those agencies in conjunction with the board certification hearing. In such a conjunctive hearing the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the department of health and the board of health."

Section 4. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision -- contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons therefor.

(3) Any certificate issued by the board shall include

the following:

(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facility;

(v) a plan for monitoring environmental effects of the proposed facility; and

(vi) a time limit as provided in subsection (4), during which construction of the facility must be completed;

(b) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) The board shall issue as part of the certificate the following time limits during which construction of a facility must be completed:

(a) for a facility as defined in (b)~~,~~ (c)~~,~~ or ~~(e)~~ (d) of 75-20-104~~(7)~~(10) that is more than 30 miles in length, the time limit is 10 years.

(b) For a facility as defined in (b)~~,~~ (c)~~,~~ or ~~(e)~~ (d) of 75-20-104~~(7)~~(10) that is 30 miles or less in length, the

time limit is 5 years.

(c) The time limit shall be extended for periods of 2 years each upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction. Under this subsection, a good faith effort to complete construction includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced."

Section 5. Section 75-20-304, MCA, is amended to read:

"75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a utility or person subject to this chapter that a facility or

associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of subsections (2)(c), (3)(b), and (3)(c) of 75-20-301 and 75-20-501(5) and the requirements of subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3), and 75-20-303(3)(a)(ix) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in subsections (10)(b), (c), (d), ~~(e)(i)~~ or ~~(e)~~ (f) of 75-20-104, for an associated facility defined in subsection (3) of 75-20-104, or for any portion of or process in a facility defined in subsection (10)(a) of 75-20-104 to the extent that the process or portion of the facility is not subject to a permit issued by the department of health or board of health.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection shall be credited toward the fee paid under 75-20-215 to the extent the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under

this chapter.

(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."

Section 6. Section 75-20-1202, MCA, is amended to read:

"75-20-1202. Definitions. As used in this part and 75-20-201 through 75-20-203, the following definitions apply:

(1) (a) "Nuclear facility" means each plant, unit, or other facility designed for, or capable of,

(i) generating 50 megawatts of electricity or more by means of nuclear fission,

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels, or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility;

(b) "nuclear facility" does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy.

(2) "Facility," as defined in 75-20-104~~(7)~~(101) is further defined to include any nuclear facility as defined in subsection (1)(a) of this section."

Section 7. Section 85-1-205, MCA, is amended to read:

"85-1-205. Acquisition of water in ~~Fort-Peck-Reservoir~~ federal reservoirs. The department may acquire water by purchase option or agreement with the federal government from ~~the--Fort-Peck-Reservoir~~ any federal reservoir for the purpose of sale, rent, or distribution for industrial use. In such cases, the department is not required to construct any diversion or appropriation facilities or works, and it may sell, rent, or distribute such water at such rates and under such terms and conditions ~~as-it-considers--appropriate~~ as are established under the provisions of 85-2-311."

Section 8. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. ~~The~~ (1) Except as provided in subsection (2) ~~and (3), the~~ department shall issue a permit if the applicant proves by substantial credible evidence that the following criteria are met:

~~(1)~~(a) there are unappropriated waters in the source of supply:

~~(a)~~(i) at times when the water can be put to the use proposed by the applicant;

~~(b)~~(ii) in the amount the applicant seeks to appropriate; and

~~(c)~~(iii) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(2)(b) the rights of a prior appropriator will not be adversely affected;

(3)(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(4)(d) the proposed use of water is a beneficial use;

(5)(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

~~(6) an applicant for an appropriation of 10,000 acre-feet a year or more and 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected;~~

~~(7) except as provided in subsection (6), the applicant proves by substantial credible evidence the criteria listed in subsections (1) through (5).~~

(2) (a) The department may not issue a permit for an appropriation of 5,000 10,000 or more acre-feet of water a year or 7 15 or more cubic feet per second of water unless:

(i) the department makes an affirmative finding that:

(A) the criteria in subsection (1) are met;

(B) the applicant has proven by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected; and

(C) the proposed appropriation is in the public

interest; and

(ii) the legislature affirms the findings pursuant to subsection (2)(c).

(b) In making such a finding, the department shall consider:

(i) existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the economic feasibility of the project;

(iv) the effects on the quantity, quality, and potability of water of existing beneficial uses in the source of supply;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(c) A permit for an appropriation FOR A DIVERSION FOR A CONSUMPTIVE USE of 5,000 10,000 or more acre-feet of water a year or 7 15 or more cubic feet per second of water under subsection (2) may not be issued unless the department

(3) permits for the use of water in excess of 10,000 or more acre feet per year or 15 or more cubic feet per second issued on applications for permits filed with the department of natural resources and conservation after the effective date of this act shall not be valid until approved by the legislature.

~~(3) An appropriation, diversion, impoundment, restraint, or attempted appropriation, diversion, impoundment, or restraint contrary to the provisions of this section is null and void. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized appropriation, diversion, impoundment, or other restraint. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, or otherwise restrain or control any of the waters within the boundaries of this state except in accordance with this section.~~"

NEW SECTION. Section 9. Repealer. Section 85-1-121, MCA, is repealed.

NEW SECTION. Section 10. Study of water marketing. (1) There is a select committee on water marketing. The select committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The select committee shall meet as often as necessary to complete the study of water marketing required under this section.

(2) The select committee on water marketing shall

undertake a study of the economic, tax, administrative, legal, social, and environmental advantages and disadvantages of water marketing.

(3) The select committee shall study the desirability and feasibility of in-state and out-of-state marketing of limited amounts of water for industrial purposes from existing state and federal reservoirs and from proposed reservoirs with water reservations.

(4) The study must include:

(a) the present and future in-state demands for water for domestic, municipal, agricultural, industrial, recreational, in-stream flows, and other beneficial uses;

(b) how best to encourage a negotiated resolution of the conflicting demands of water users within the Missouri River basin and to discourage litigation and congressional action initiated by lower basin states;

(c) the potential effects of a coal slurry pipeline on coal production and the economic and environmental effects of increased coal production;

(d) the effects of a coal slurry pipeline on the railroad industry and rail rates for noncoal shippers;

(e) alternative structures for a water marketing program;

(f) alternative uses of revenue derived from water marketing; and

(g) the potential ecological effects of the installation and operation of coal slurry pipelines.

(5) The select committee shall solicit the advice of the department of natural resources and conservation, various interested industries, conservation groups, appropriate state and federal agencies, and the public in carrying out its duties under this section.

(6) The environmental quality council shall provide staff assistance to the select committee. The select committee may contract with experts and consultants, in addition to assistance from the environmental quality council staff, in carrying out its duties under this section.

(7) The select committee shall report its findings and recommendations for legislation, if any, to the 49th legislature.

NEW SECTION. Section 11. Appropriation. There is appropriated from the renewable resource development clearance fund account to the environmental quality council for the biennium ending June 30, 1985, $80,000 for the study of water marketing by the select committee on water marketing required by section 10.

deleted by S. Rules

NEW SECTION. Section 12. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 13. Effective date. This act is effective on passage and approval.

-End-

STANDING COMMITTEE REPORT

April 14 19 83

MR. PRESIDENT

We, your committee on AGRICULTURE, LIVESTOCK AND IRRIGATION

having had under consideration HOUSE Bill No. 908

Harper (Lee)

Respectfully report as follows: That HOUSE Bill No. 908

third reading blue, be amended as follows:

1. Title, line 10.
Following: "MARKETING"
Insert: "PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER"

2. Title, lines 11 and 12.
Strike: "75-20-104," on line 11 through "75-20-1202," on line 12.
Following: "85-1-205" on line 12
Strike: ","

3. Title, line 14.
Following: "DATE"
Insert: "AND A TERMINATION DATE"

XXXXXX

(CONTINUED)

Chairman.

STATE PUB. CO.
Helena, Mont.

April 14 1983

4. Page 1, line 17 through line 24 on page 15.
Strike: Sections 1 through 6 in their entirety
Renumber: subsequent sections

5. Page 16, line 2.
Following: "."
Insert: "(1)"
Following: "water"
Insert: "or water storage"

6. Page 16, line 5.
Following: "industrial"
Strike: "use"
Insert" "and other uses"

7. Page 16, line 10.
Strike: "as" through "85-2-311"
Insert: "as it considers appropriate, except as provided in subsection (2). (2) Until a final decree has been issued pursuant to 85-2-234 concerning the waters in a federal reservoir, the department may sell, rent, or distribute such water only after a permit has been issued to an applicant for purchase, rent, or distribution of water in accordance with part 3 of this chapter"

8. Page 17, line 17 through line 2 on page 19.
Strike: These lines in their entirety
Insert: "(2) A permit for an appropriation of 10,000 or more acre-feet of water a year or 15 or more cubic feet per second of water on applications filed with the department after [the effective date of this act] may not be issued unless the department petitions the legislature and the legislature affirms the issuance by the department."

9. Page 19, line 12.
Strike: "any of the"

10. Page 22, line 6.
Following: line 5
Insert: "NEW SECTION. Section 7. Termination date. This act terminates on July 1, 1985."

And, as so amended, BE CONCURRED IN

Jack E. Galt, Chairman.

STATE PUB. CO.
Helena, Mont.

April 14, 1983

SENATE COMMITTEE OF THE WHOLE AMENDMENT

That House Bill No. 908 be amended as follows:

1. Page 16, line 13.
Strike: "and (3)"
Insert: "through (4)"

2. Page 19, line 3.
Following: line 2
Insert: "(2) The department may not issue a permit for an appropriation of 10,000 or more acre-feet of water a year or 15 or more cubic feet per second of water unless the applicant has proven by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected."

Renumber: subsequent subsections

EIGHTY-FOURTH LEGISLATIVE DAY

Helena, Montana
April 14, 1983

Senate Chambers
State Capitol

Senate convened at 10:05 a.m., President Stephens presiding. Invocation by the Chaplain. Pledge of Allegiance to the Flag.

Roll call. All members present. Quorum present.

Mr. President: We, your Committee on Bills and Journal, having examined the daily journal for the eighty-third legislative day, find the same to be correct.

Tveit, Chairman

REPORTS OF STANDING COMMITTEES

BILLS (Tveit, Chairman):
Delivered to the Governor for his approval at 9:45 a.m., 4/14/83: SB 69, SB 159, SB 201, SB 214, SB 227, SB 249, SB 309, SB 316, SB 378, SB 391, SB 395, SB 410, SB 441, SB 448, SB 454.

TAXATION (Goodover, Chairman):
HB 923, be concurred in. Report adopted.

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Senator Hazelbaker moved that the Senate resolve itself into a Committee of the Whole, for the consideration of business on second reading. Motion carried. Senator Kolstad in the Chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

SECTION D. DEPARTMENT OF INSTITUTIONS

HB 447 - That HB 447, third reading copy, be amended as follows:

1. Page 68, line 10.
Strike: "4,469,969 4,532,945"
Insert: "4,462,186 4,524,306"

2. Page 70, line 10.
Strike: "10,768,814 10,836,299"
Insert: "10,761,649 10,828,345"

3. Page 73, line 8.
Strike: "9,257,703 9,133,601"
Insert: "9,250,700 9,125,828"

4. Page 76, line 10.
Strike: "18,703,668 16,949,299"
Insert: "18,697,270 16,942,197"

Amendment passed as follows:

Ayes: Aklestad, Crippen, Daniels, Dover, Elliott, Etchart, Gage, Galt, Goodover, Hager, Hammond, Keating, Kolstad, Lee, Marbut, McCallum, Ochsner, Severson, Shaw, Smith, Story, Turnage, Tveit, Mr. President.
Total 24

Noes: Berg, Blaylock, Brown, Christiaens, Conover, Eck, Fuller, Graham, Haffey, Halligan, Himsl, Jacobson, Lane, Lynch, R. Manning, Mazurek, Mohar, Regan, Stimatz, Thomas, Towe, Van Valkenburg.

Total 0

Absent or not voting: None.
Total 0

HB 187 - That HB 187 be concurred in. Motion carried as follows:

Ayes: Aklestad, Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Dover, Eck, Elliott, Etchart, Fuller, Gage, Galt, Goodover, Graham, Haffey, Hager, Halligan, Hammond, Hazelbaker, Himsl, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Shaw, Smith, Stimatz, Story, Thomas, Towe, Turnage, Tveit, Van Valkenburg, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

HB 901 - That HB 901 be concurred in. Motion carried as follows:

Ayes: Aklestad, Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Dover, Eck, Elliott, Etchart, Fuller, Gage, Galt, Goodover, Graham, Haffey, Hager, Halligan, Hammond, Hazelbaker, Himsl, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Shaw, Smith, Stimatz, Story, Thomas, Towe, Turnage, Tveit, Van Valkenburg, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

HB 908 - That HB 908, third reading copy, be amended as follows:

1. Page 16, line 13.
Strike: "and (3)"
Insert: "through (4)"

2. Page 19, line 3.
Following: line 2
Insert: "(2) The department may not issue a permit for an appropriation of 10,000 or more acre-feet of water a year or 15 or more cubic feet per second of water unless the applicant has proven by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected."
Renumber: subsequent subsections

Amendment passed as follows:

Ayes: Aklestad, Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Dover, Eck, Elliott, Etchart, Fuller, Gage, Galt,

Goodover, Graham, Haffey, Hager, Halligan, Hammond, Hazelbaker, Himsl, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Shaw, Smith, Stimatz, Story, Thomas, Towe, Turnage, Tveit, Van Valkenburg, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

That HB 908, third reading copy, be further amended as follows:

1. Senate Standing Committee amendments.
Strike: amendments 3, 8, 9, and 10

2. Page 17, line 25.
Following: "the"
Strike: "public interest"
Insert: "best interests of the state"

3. Page 18, line 2.
Following: "findings"
Strike: "pursuant to"
Insert: "whenever required by"

4. Page 18, line 4.
Following: "making"
Strike: "such a"
Insert: "the"
Following: "finding"
Insert: "required by 2(a)(i)(C)"

5. Page 19, lines 9 through 14.
Following: "restraint."
Strike: "No" through "section." on line 14

Amendment failed as follows:

Ayes: Berg, Blaylock, Brown, Christiaens, Conover, Daniels, Eck, Fuller, Haffey, Halligan, Jacobson, Lane, Lynch, R. Manning, Mazurek, Mohar, Norman, Ochsner, Regan, Stimatz, Towe, Van Valkenburg.
Total 22

Noes: Aklestad, Boylan, Crippen, Dover, Elliott, Etchart, Gage, Galt, Goodover, Graham, Hager, Hammond, Hazelbaker, Himsl, Keating, Kolstad, Lee, D. Manning, Marbut, McCallum, Severson, Shaw, Smith, Story, Thomas, Tveit, Mr. President.
Total 27

Excused: None.
Total 0

Absent or not voting: Turnage.
Total 1

That HB 908, as amended, be concurred in. Motion carried as follows:

EIGHTY-FIFTH LEGISLATIVE DAY

Helena, Montana
April 15, 1983

Senate Chambers
State Capitol

Senate convened at 2:00 p.m., President Stephens presiding. Invocation by the Chaplain. Pledge of Allegiance to the Flag.

Roll call. All members present except Tveit, excused. Quorum present.

Mr. President: We, your Committee on Bills and Journal, having examined the daily journal for the eighty-fourth legislative day, find the same to be correct.

Tveit, Chairman

REPORTS OF STANDING COMMITTEES

Delivered to the Governor for his approval at 9:45 a.m., 4/15/83: SB 107, SB 313, SB 335, SB 436.

Delivered to the Governor for his approval at 11:30 a.m., 4/15/83: SB 106, SB 141, SB 167, SB 190, SB 217, SB 232, SB 298, SB 443, SB 446.

FINANCE AND CLAIMS (Himsl, Chairman):
HB 558, be concurred in. Report adopted.
HB 900, be concurred in. Report adopted.

JUDICIARY (Turnage, Chairman):
SB 465, do pass. Report adopted.

STATE ADMINISTRATION (Story, Chairman):
HB 668, be concurred in. Report adopted.
HB 899, be concurred in. Report adopted.
HJR 38, be concurred in. Report adopted.
HB 580, be not concurred in. Thereupon, the adverse committee report was adopted as follows:

Ayes: Aklestad, Boylan, Brown, Conover, Crippen, Daniels, Dover, Elliott, Etchart, Gage, Galt, Goodover, Graham, Haffey, Hager, Hammond, Hazelbaker, Himsl, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, Marbut, Mazurek, McCallum, Ochsner, Severson, Shaw, Stimatz, Thomas, Turnage, Mr. President.
Total 35

Noes: Berg, Blaylock, Christiaens, Eck, Fuller, Halligan, R. Manning, Mohar, Norman, Regan, Story, Towe, Van Valkenburg.
Total 13

Excused: Tveit.
Total 1

Absent or not voting: Smith.
Total 1

TAXATION (Goodover, Chairman):
HB 573, be not concurred in. Thereupon, the adverse committee report was adopted as follows:

Ayes: Aklestad, Berg, Boylan, Christiaens, Conover, Crippen, Daniels, Dover, Eck, Elliott, Galt, Goodover, Graham, Haffey, Hazelbaker, Himsl, Jacobson, Keating, Kolstad, Lynch, R. Manning, Marbut, McCallum, Ochsner, Shaw, Stimatz, Thomas, Turnage, Van Valkenburg, Mr. President.

Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Smith, Stimatz, Thomas, Towe, Turnage, Van Valkenburg, Mr. President.
Total 46

Noes: Boylan, Shaw.
Total 2

Excused: Story, Tveit.
Total 2

Absent or not voting: None.
Total 0

HB 908 concurred in as follows:

Ayes: Aklestad, Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Dover, Eck, Elliott, Etchart, Fuller, Gage, Galt, Goodover, Graham, Haffey, Hager, Halligan, Hammond, Hazelbaker, Himsl, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Shaw, Smith, Stimatz, Thomas, Towe, Turnage, Van Valkenburg, Mr. President.
Total 48

Noes: None.
Total 0

Excused: Story, Tveit.
Total 2

Absent or not voting: None.
Total 0

HB 919 concurred in as follows:

Ayes: Aklestad, Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Dover, Eck, Elliott, Etchart, Fuller, Gage, Galt, Goodover, Graham, Haffey, Hager, Halligan, Hammond, Hazelbaker, Himsl, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Shaw, Smith, Stimatz, Thomas, Towe, Turnage, Van Valkenburg, Mr. President.
Total 48

Noes: None.
Total 0

Excused: Story, Tveit.
Total 2

Absent or not voting: None.
Total 0

HB 923 concurred in as follows:

Ayes: Aklestad, Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Dover, Eck, Elliott, Etchart, Fuller, Gage, Galt, Goodover, Graham, Haffey, Hager, Halligan, Hammond, Hazelbaker, Himsl, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Shaw, Smith, Stimatz, Thomas, Towe, Turnage, Van Valkenburg, Mr. President.
Total 48

HOUSE BILL NO. 908

INTRODUCED BY HARPER, BARDANOUVE, IVERSON, VINCENT, KEMMIS, ASAY, FABREGA

A BILL FOR AN ACT ENTITLED: "AN ACT ~~ADDING CERTAIN PIPELINES TO THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT; PROHIBITING THE ISSUANCE OF PERMITS FOR CERTAIN AMOUNTS OF WATER WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR A STUDY BY A SELECT COMMITTEE OF WATER MARKETING~~ PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER; ~~PROVIDING AN APPROPRIATION~~; AMENDING SECTIONS ~~75-20-104, 75-20-216, 75-20-218, 75-20-303, 75-20-304, 75-20-1202,~~ 85-1-205, AND 85-2-311, MCA; REPEALING SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 75-20-104, MCA, is amended to read:~~

~~"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:~~

~~(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.~~

~~(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.~~

~~(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.~~

~~(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.~~

~~(7) "Commence to construct" means:~~

~~(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;~~

~~(b) the fracturing of underground formations by any~~

means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploratory investigatory or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights of way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries, and facilities and associated facilities designed for or capable of producing, gathering, processing, transmitting, transporting, or distributing crude oil or natural gas, and

those facilities subject to the Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of $10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of $10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $10 million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in

length.

(c) each pipeline and associated facilities designed for or capable of transporting gas (except for natural gas, water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection (10)(a) of this section.

(d) each pipeline greater than 20 inches in diameter or and 20 miles in length and associated facilities designed and INTENDED for or capable of transporting water or using water as a transport medium.

(e)(i) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $750,000.

(e)(ii) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a

proposed transmission line.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use.

Section 2. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies. (1) After receipt of an application, the department and department of health shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and lists the deficiencies therein and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-215 and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of health shall commence a study to enable it or the board of health to issue a declaratory opinion, order

certification, or permit as provided in subsection (3). The department and department of health shall use, to the extent they consider applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health shall within 1 year following the date of acceptance of an application and the board of health or department of health, if applicable, within an additional 6 months issue any decision, opinion, order, certification, or permit required under the laws administered by the department of health or the board of health and this chapter. The department of health and the board of health shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit with or without conditions is conclusive on all matters that the department of health and board of health administer and any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the determinations made under the laws administered by the department of health and the board of health. Although the decision, opinion, order, certification, or permit issued under this subsection is

conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). The decision, opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board and shall be utilized as part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in (a) and (d) (c) of 75-20-104(10) and for a facility as defined in (b) and (c) through (d) of 75-20-104(10) which is more than 30 miles in length and within 1 year for a facility as defined in (b) and (c) through (d) of 75-20-104(10) which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant

to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of highways, commerce, fish, wildlife, and parks, state lands, revenue, and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required reports."

Section 3. Section 75-20-216, MCA, is amended to read:

"75-20-216. Hearing -- date -- location -- department to act as staff -- hearings to be held jointly. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. Except for those hearings involving applications submitted for facilities as defined in (b) and (c) of 75-20-104(10), certification certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in

which the facility or the greater portion thereof is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department of health and the board of health shall hold any required permit hearings required under laws administered by those agencies in conjunction with the board certification hearings. In such a conjunctive hearing, the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the department of health and the board of health."

Section 4. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion -- issued with decision -- contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it

shall state in its opinion the reasons therefor.

(3) Any certificate issued by the board shall include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facility;

(v) a plan for monitoring environmental effects of the proposed facility; and

(vi) a time limit as provided in subsection (4) during which construction of the facility must be completed;

(b) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) The board shall issue as part of the certificate the following time limits during which construction of a facility must be completed:

(a) For a facility as defined in (b)(i)(A) or (c) [1] of 75-20-104(7)(b) that is more than 30 miles in length, the time limit is 10 years.

(b) For a facility as defined in (b)(i)(A) or (c) [1] of 75-20-104(7)(b) that is 30 miles or less in length, the time limit is 5 years.

(c) The time limit shall be extended for periods of 2 years each upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction. Under this subsection, a good faith effort to complete construction includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced."

Section 5. Section 75-20-304, MCA, is amended to read:

"75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the

provisions of this chapter upon receipt of notice by a utility or person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of subsections (2)(c), (3)(b), and (3)(c) of 75-20-301, and 75-20-501(5), and the requirements of subsections (1)(a), (4), and (7) of 75-20-222, 75-20-216(3), and 75-20-303(3)(a) if, relating to consideration of alternative sites, if the applicant makes a clear and convincing showing to the board at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 250 or more permanent jobs within 2 years of the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructed within a

15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternative or minimum adverse environmental impact for a facility defined in subsections (1)(b), (c), (d), (g), or (e) [as] of 75-20-104, for an associated facility defined in subsection (3) of 75-20-104, or for any portion of or process in a facility defined in subsection (10)(b) of 75-20-104 to the extent that the process or portion of the facility is not subject to a permit issued by the department of health or board of health.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection shall be credited toward the fee paid under 75-20-215 to the extent the data or evidence presented at

~~the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.~~

~~(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a).~~"

~~Section 6. Section 75-20-1202, MCA, is amended to read:~~

~~"75-20-1202. Definitions. As used in this part and 75-20-201 through 75-20-203, the following definitions apply:~~

~~(1) (a) "Nuclear facility" means each plant, unit, or other facility designed for, or capable of:~~

~~(i) generating 50 megawatts of electricity or more by means of nuclear fission;~~

~~(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or~~

~~(iii) storing or disposing of radioactive wastes or materials from a nuclear facility;~~

~~(b) "nuclear facility" does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy.~~

~~(2) "Facility" as defined in 75-20-104(7)(b) is further defined to include any nuclear facility as defined~~

~~in subsection (1)(a) of this section.~~"

Section 1. Section 85-1-205, MCA, is amended to read:

"85-1-205. Acquisition of water in ~~Fort Peck Reservoir~~ federal reservoirs. (1) The department may acquire water OR WATER STORAGE by purchase option or agreement with the federal government from ~~the Fort Peck Reservoir~~ any federal reservoir for the purpose of sale, rent, or distribution for industrial ~~use~~ AND OTHER USES. In such cases, the department is not required to construct any diversion or appropriation facilities or works, and it may sell, rent, or distribute such water at such rates and under such terms and conditions as it considers appropriate ~~as are established under the provisions of 85-2-331~~ AS IT CONSIDERS APPROPRIATE, EXCEPT AS PROVIDED IN SUBSECTION (2).

(2) UNTIL A FINAL DECREE HAS BEEN ISSUED PURSUANT TO 85-2-234 CONCERNING THE WATERS IN A FEDERAL RESERVOIR, THE DEPARTMENT MAY SELL, RENT, OR DISTRIBUTE SUCH WATER ONLY AFTER A PERMIT HAS BEEN ISSUED TO AN APPLICANT FOR PURCHASE, RENT, OR DISTRIBUTION OF WATER IN ACCORDANCE WITH PART 3 OF THIS CHAPTER."

Section 2. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. ~~The~~ (1) Except as provided in subsections (2) and ~~(3)~~ THROUGH (4), the department shall issue a permit if the applicant proves by substantial credible evidence that the following criteria

are met:

(1)(a) there are unappropriated waters in the source of supply:

(b)(ii) at times when the water can be put to the use proposed by the applicant;

(b)(iii) in the amount the applicant seeks to appropriate; and

(c)(iiii) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(2)(b) the rights of a prior appropriator will not be adversely affected;

(3)(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(4)(d) the proposed use of water is a beneficial use;

(5)(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(5)--an---applicant--for--an--appropriation--of--10,000 acre-feet-a-year-or-more-and-15-cubic--feet--per--second--or more-proves-by-clear-and-convincing-evidence-that-the-rights of-a-prior-appropriator-will-not-be-adversely-affected;

(7)--except---as---provided---in--subsection--(5)(--the applicant--proves--by--substantial--credible--evidence---the

criteria-listed-in-subsections-(1)-through-(5).

(2)--(a)-The---department---may-not-issue-a-permit-for-an appropriation-of-5,000-10,000-or-more-acre-feet-of--water--a year--or-2-15-or-more-cubic-feet-per-second-of-water-unless

(i)--the-department-makes-an-affirmative-finding--that:

(A)--the-criteria-in-subsection-(1)-are-met;

(B)--the--applicant--has-proven-by-clear-and-convincing evidence-that-the-rights-of-a-prior-appropriator-will-not-be adversely-affected;-and

(C)--the---proposed---appropriation---is---in---the----public interest;-and

(ii)--the---legislature-affirms-the-findings-pursuant-to subsection-(2)(a)(i).

(b)--In-making-such-a---finding,---the---department---shall consider:

(i)--existing--demands--on--the--state-water-supply,-as well-as-projected-demands-such-as-reservations-of-water--for future----beneficial----purposes,---including---municipal---water supplies,-irrigation-systems,-and--minimum--streamflows--for the-protection-of-existing-water-rights-and-aquatic-life;

(ii)--the-benefits-to-the-applicant-and-the-state;

(iii)--the-economic-feasibility-of-the-project;

(iv)--the----effects----on----the---quantity,---quality,---and potability-of-water--of---existing---beneficial---uses---in---the source-of-supply;

~~(v)--the--effects--on--private--property--rights-by-any creation-of-or-contribution-to-saline-seep-and~~

~~(vi)-the-probable-significant-adverse-environmental impacts--of--the--proposed-use-of-water-as-determined-by-the department-pursuant-to-Title-75,-chapter--1,--or--Title--75, chapter-20.~~

~~(c)--A--permit-for-an-appropriation FOR-A-DIVERSION-FOR A-CONSUMPTIVE-USE of 5,000 10,000 or-more-acre-feet-of-water a-year-or 7 15 or-more-cubic-feet-per-second-of-water--under subsection--(2)--may--not--be--issued--unless-the-department petitions-the-legislature-and-the--legislature--affirms--the findings-of-the-department.~~

(2) THE DEPARTMENT MAY NOT ISSUE A PERMIT FOR AN APPROPRIATION OF 10,000 OR MORE ACRE-FEET OF WATER A YEAR OR 15 OR MORE CUBIC FEET PER SECOND OF WATER UNLESS THE APPLICANT HAS PROVEN BY CLEAR AND CONVINCING EVIDENCE THAT THE RIGHTS OF A PRIOR APPROPRIATOR WILL NOT BE ADVERSELY AFFECTED.

~~(2)~~(3) A PERMIT FOR AN APPROPRIATION OF 10,000 OR MORE ACRE-FEET OF WATER A YEAR OR 15 OR MORE CUBIC FEET PER SECOND OF WATER ON APPLICATIONS FILED WITH THE DEPARTMENT AFTER [THE EFFECTIVE DATE OF THIS ACT] MAY NOT BE ISSUED UNLESS THE DEPARTMENT PETITIONS THE LEGISLATURE AND THE LEGISLATURE AFFIRMS THE ISSUANCE BY THE DEPARTMENT.

~~(3)~~(4) An appropriation, diversion, impoundment,

restraint, or attempted appropriation, diversion, impoundment, or restraint contrary to the provisions of this section is null and void. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized appropriation, diversion, impoundment, or other restraint. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, or otherwise restrain or control any of the waters within the boundaries of this state except in accordance with this section."

NEW SECTION. Section 3. Repealer. Section 85-1-121, MCA, is repealed.

NEW SECTION. Section 4. Study of water marketing. (1) There is a select committee on water marketing. The select committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The select committee shall meet as often as necessary to complete the study of water marketing required under this section.

(2) The select committee on water marketing shall undertake a study of the economic, tax, administrative, legal, social, and environmental advantages and disadvantages of water marketing.

(3) The select committee shall study the desirability and feasibility of in-state and out-of-state marketing of limited amounts of water for industrial purposes from existing state and federal reservoirs and from proposed reservoirs with water reservations.

(4) The study must include:

(a) the present and future in-state demands for water for domestic, municipal, agricultural, industrial, recreational, in-stream flows, and other beneficial uses;

(b) how best to encourage a negotiated resolution of the conflicting demands of water users within the Missouri River basin and to discourage litigation and congressional action initiated by lower basin states;

(c) the potential effects of a coal slurry pipeline on coal production and the economic and environmental effects of increased coal production;

(d) the effects of a coal slurry pipeline on the railroad industry and rail rates for noncoal shippers;

(e) alternative structures for a water marketing program;

(f) alternative uses of revenue derived from water marketing; and

(g) the potential ecological effects of the installation and operation of coal slurry pipelines.

(5) The select committee shall solicit the advice of

the department of natural resources and conservation, various interested industries, conservation groups, appropriate state and federal agencies, and the public in carrying out its duties under this section.

(6) The environmental quality council shall provide staff assistance to the select committee. The select committee may contract with experts and consultants, in addition to assistance from the environmental quality council staff, in carrying out its duties under this section.

(7) The select committee shall report its findings and recommendations for legislation, if any, to the 49th legislature.

~~NEW SECTION. Section 4. Appropriation. There is appropriated from the renewable resource development clearance fund account to the environmental quality council for the biennium ending June 30, 1985, $80,000 for the study of water marketing by the select committee on water marketing required by section 3.~~

NEW SECTION. Section 5. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 6. Effective date. This act is effective on passage and approval.

NEW SECTION. Section 7. TERMINATION DATE. THIS ACT TERMINATES JULY 1, 1985.

-End-

EIGHTY-SEVENTH LEGISLATIVE DAY

Helena, Montana
April 18, 1983

House Chambers
State Capitol

House convened at 9:00 a.m., Mr. Speaker in the Chair. Invocation by the Chaplain, Reverend Harper. Pledge of Allegiance to the Flag.

Roll call. All members present except Daily, Fabrega, Harrington, Holliday, J. Jensen, Pavlovich, Sales, Shontz, Yardley, excused. Quorum present.

REPORTS OF STANDING COMMITTEES

BILLS (J. Brown, Vice-Chairman): 4/18/83
Correctly printed: HB 927, HJR 44.
Considered correctly engrossed: HJR 43, HJR 45.
Correctly engrossed: HB 833.
Delivered to the Secretary of State at 8:50 a.m., 4/18/83: HJR 35, HJR 36.
Delivered to the Governor for his approval at 9:27 a.m., 4/16/83: HB 511, HB 629, HB 682.

Adverse Committee Report

HJR 4 - Representative Vincent moved that the adverse committee report on HJR 4 be adopted. Representative Nordtvedt made a substitute motion that HJR 4 be printed and placed on second reading. The substitute motion carried.

MESSAGES FROM THE OTHER HOUSE

House bill concurred in as amended and returned to the House for concurrence in Senate amendments: 4/16/83

HB 902, introduced by Bardanouve

Conference committee reports adopted: 4/16/83

Conference committee report on HB 53

Conference committee report on HB 150

Conference committee report on HB 743

Conference committee report on HB 750

Free conference committee report on HB 232

Free conference committee report on HB 319

Free conference committee report on HB 373

Free conference committee report on HB 377

Free conference committee report on HB 428

Free conference committee report on HB 663

Free conference committee report on HB 802

Free conference committee report on HB 825

Free conference committee report on HB 873

Free conference committee report on SB 456

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bengtson, Bergene, Bertelsen, Bliss, Brand, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Driscoll, Ellerd, Ellison, Ernst, Eudaily, Fabrega, Fagg, Farris, Hammond, Hand, Hannah, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kemmis, Kennerly, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nilson, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Ramirez, Ream, Roush, Ryan, Sands, Saunders, Schultz, Schye, Shontz, Smith, Solberg, Spaeth, Swift, Switzer, Thoft, Underdal, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Yardley, Zabrocki.
Total 94

Noes: D. Brown, Keyser, Sales, Seifert, Stobie.
Total 5

Excused: Quilici.
Total 1

Absent or not voting: None.
Total 0

HB 897 - That Senate amendments to HB 897 be not concurred in. Motion carried as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bengtson, Bergene, Bertelsen, Bliss, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Driscoll, Ellerd, Ellison, Ernst, Eudaily, Fabrega, Fagg, Farris, Hammond, Hand, Hannah, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Keenan, Kemmis, Kennerly, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nilson, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Ramirez, Ream, Roush, Sales, Sands, Saunders, Schultz, Schye, Seifert, Shontz, Smith, Solberg, Spaeth, Swift, Switzer, Thoft, Underdal, Veleber, Vincent, Vinger, Waldron, Williams, Winslow, Yardley, Zabrocki.
Total 90

Noes: Brand, D. Brown, Keyser, Ryan, Stobie, Wallin.
Total 6

Excused: Quilici.
Total 1

Absent or not voting: Bardanouve, Kadas, Marks.
Total 3

HB 898 - Representative Bardanouve moved that Senate amendments to HB 898 be passed to the bottom of the board. Motion carried.

Representative Neuman in the Chair.

HB 908 - That Senate amendments to HB 908 be not concurred in. Motion carried as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bengtson, Bergene, Bertelsen, Bliss, Brand, D. Brown, J. Brown, Compton, Connelly, Daily, Darko, Donaldson, Dozier, Driscoll, Ellerd, Ellison, Ernst, Eudaily, Fabrega, Fagg, Farris, Hammond, Hand, Hannah, Hansen, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kemmis, Kennerly, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Manuel, Menahan, Metcalf,

Miller, Mueller, Neuman, Nilson, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Ramirez, Ream, Roush, Ryan, Sands, Saunders, Schultz, Schye, Shontz, Smith, Spaeth, Stobie, Switzer, Thoft, Underdal, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Yardley, Zabrocki.
Total 91

Noes: Curtiss, Devlin, Hanson, Sales, Seifert, Solberg, Swift.
Total 7

Excused: Quilici.
Total 1

Absent or not voting: Keyser.
Total 1

HB 914 - That Senate amendments to HB 914 be concurred in. Motion carried as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bengtson, Bergene, Bertelsen, Bliss, Brand, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Driscoll, Ellerd, Ellison, Ernst, Eudaily, Fabrega, Fagg, Farris, Hammond, Hand, Hannah, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kemmis, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nilson, Nisbet, Nordtvedt, O'Connell, Pavlovich, Phillips, Pistoria, Ramirez, Ream, Roush, Ryan, Sales, Sands, Saunders, Schultz, Schye, Seifert, Shontz, Smith, Solberg, Spaeth, Stobie, Swift, Thoft, Underdal, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Yardley, Zabrocki.
Total 95

Noes: Hansen, Switzer.
Total 2

Excused: Quilici.
Total 1

Absent or not voting: Jacobsen, Peck.
Total 2

Representative Holliday excused at this time.

HB 919 - That Senate amendments to HB 919 be concurred in. Motion carried as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bengtson, Bergene, Bertelsen, Bliss, Brand, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Driscoll, Ellerd, Ellison, Ernst, Eudaily, Fagg, Farris, Hammond, Hand, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kemmis, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nilson, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Ramirez, Ream, Roush, Ryan, Saunders, Schultz, Schye, Seifert, Shontz, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Yardley, Zabrocki.
Total 94

Noes: Hannah, Sales, Sands.
Total 3

EIGHTY-EIGHTH LEGISLATIVE DAY

Helena, Montana
April 19, 1983

House Chambers
State Capitol

House convened at 9:00 a.m., Mr. Speaker in the Chair. Invocation by the Chaplain, Reverend Harper. Pledge of Allegiance to the Flag.

Roll call. All members present except Marks, Menahan, Shontz, excused. Quorum present.

Mr. Speaker: We, your Committee on Legislative Administration/Bills and Journal, having examined the daily journal for the eighty-fourth legislative day, find the same to be correct.

J. Brown, Vice-Chairman

REPORTS OF STANDING COMMITTEES

BILLS (Menahan, Chairman): 4/16/83
Correctly printed: HJR 46.

BILLS (J. Brown, Vice-Chairman): 4/19/83
Correctly enrolled: HB 373, HB 847, HB 890, HB 901, HB 922, HB 923, HB 924.

MESSAGES FROM THE GOVERNOR

The Honorable Dan Kemmis
Speaker of the House
State Capitol
Helena, Montana 59620

April 19, 1983

Dear Mr. Speaker:

This is to inform you that I have signed the following bill April 18, 1983:

House bill 746.

Sincerely,

Ted Schwinden
Governor

The Honorable Stan Stephens
President of the Senate
State Capitol
Helena, Montana 59620

April 19, 1983

The Honorable Daniel Kemmis
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Senator Stephens and Representative Kemmis:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return House Bill No. 715 "AN ACT TO ALLOW COUNTIES AND MUNICIPALITIES TO AMEND THEIR FINAL BUDGETS BECAUSE OF SHORTFALLS IN REVENUES OR SAVINGS; AMENDING SECTIONS 7-6-2302, 7-6-2324, 7-6-4231, AND 7-6-4235, MCA; AND PROVIDING AN EFFECTIVE DATE", without my signature and recommend the attached amendment for the following reasons.

necessary to carry out the provisions of this chapter, within the limitations of legislative appropriations. The legislative auditor may employ legal counsel to conduct proceedings under this chapter."

Section 15. Section 75-1-321, MCA, is amended to read:

"75-1-321. Appointment and qualifications of executive director. The council shall appoint the executive director and, subject to the approval of the legislative management committee, set his salary. The executive director shall hold a degree from an accredited college or university with a major in one of the several environmental sciences and shall have at least 3 years of responsible experience in the field of environmental management. He shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in 75-1-103; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment."

Section 16. Section 75-1-323, MCA, is amended to read:

"75-1-323. Appointment of employees. The executive director, subject to the approval of the council and the legislative management committee, may appoint whatever employees are necessary to carry out the provisions of this chapter, within the limitations of legislative appropriations."

NEW SECTION. Section 17. Codification instruction. Sections 1 through 5 are intended to be codified as an integral part of Title 5, chapter 20.

NEW SECTION. Section 18. Effective date. This act is effective on passage and approval."

For the House:

Menahan, Chairman
Donaldson
Kemmis

For the Senate:

Stephens, Chairman
Kolstad
Boylan

Free Conference Committee
on HB 908
Report No. 1, April 20, 1983

Mr. President and Speaker of the House:

We, your free conference committee on HB 908, met April 20, 1983, and considered the amendments of the following committees:

Senate Committee on Rules (4/7/83)

Senate Committee on Agriculture (4/14/83)

Senate Committee of the Whole (4/14/83)

We recommend that:

The House accede to Senate Committee on Rules amendments.

The House accede to Senate Committee on Agriculture amendments 1 through 7 and 9 and 10.

The Senate recede from Committee on Agriculture amendment 8.

The Senate recede from Senate Committee of the Whole amendments 1 and 2.

HB 908 be further amended as indicated in the clerical instructions.

The free conference committee report on HB 908 be adopted.

Clerical Instructions:

1. Page 16, line 23.
Strike: "THROUGH (4)"
Insert: "and (3)"

2. Page 19, lines 13 through 24.
Strike: subsections (2) and (3) in their entirety
Insert: "(2) (a) The department may not issue a permit for an appropriation of 10,000 or more acre-feet of water a year or 15 or more cubic feet per second of water unless it affirmatively finds:

(i) the criteria in subsection (1) are met;

(ii) the applicant has proven by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected;

(iii) the proposed appropriation is a reasonable use. Such a finding shall be based on a consideration of the following:

(A) the existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(B) the benefits to the applicant and the state;

(C) the economic feasibility of the project;

(D) the effects on the quantity, quality, and potability of water for existing beneficial uses in the source of supply;

(E) the effects on private property rights by any creation of or contribution to saline seep; and

(F) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(b) A permit for an appropriation for a diversion for a consumptive use of 10,000 or more acre-feet of water a year or 15 or more cubic feet per second of water under this subsection may not be issued unless the department petitions the legislature and the legislature affirms the findings of the department."
Renumber: subsequent subsection

For the House:

Harper, Chairman
Iverson
Kemmis

For the Senate:

Galt, Chairman
Blaylock
Lee

MESSAGES FROM THE OTHER HOUSE

The Senate, on 4/20/83, acceded to the request of the House and appointed a free conference committee to meet with a like committee from the House to confer on HB 83.

The President appointed the following members:

Senator Story, Chairman
Senator Marbut
Senator Towe

The Senate, on 4/20/83, dissolved the conference committee on HB 908 and appointed a free conference committee to meet with a like committee from the House to confer on HB 908.

The President appointed the following members:

Senator Galt, Chairman
Senator Lee
Senator Blaylock

MOTIONS

Representative Spaeth moved that the conference committee on Senate amendments to HB 885 be dissolved and that the Speaker be authorized to appoint a free conference committee of three to meet with a like committee from the Senate to confer on HB 885. Motion carried.

The Speaker appointed the following representatives:

Spaeth, Chairman
Lory
Jacobsen

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Representative Vincent moved that the House resolve itself into a Committee of the Whole, for the consideration of business on second reading under the rules of the previous sitting. Motion carried. Representative Addy in the Chair.

Mr. Speaker: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

SB 317 - That the conference committee report on House amendments to SB 317 be adopted. Motion carried as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bengtson, Bergene, Bertelsen, Bliss, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Driscoll, Ellerd, Ellison, Ernst, Eudaily, Fabrega, Fagg, Farris, Hammond, Hand, Hansen, Hanson, Harp, Harper, Harrington, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kemmis, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nilson, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Roush, Ryan, Sands, Saunders, Schultz, Schye, Seifert, Shontz, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Underdal, Veleber, Vincent, Vinger, Waldron, Winslow, Yardley, Zabrocki.
Total 93

Noes: Hannah, Sales, Wallin.
Total 3

Excused: None.
Total 0

Absent or not voting: Brand, Hart, Thoft, Williams.

Donaldson, Dozier, Driscoll, Ellerd, Ellison, Ernst, Eudaily, Fabrega, Fagg, Farris, Hammond, Hand, Hansen, Hanson, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Kadas, Keenan, Kemmis, Kennerly, Keyser, Kitselman, Lory, McBride, McCormick, Manuel, Menahan, Metcalf, Miller, Neuman, Nilson, Nisbet, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ream, Roush, Saunders, Schye, Seifert, Shontz, Solberg, Spaeth, Underdal, Veleber, Vincent, Williams, Zabrocki.
Total 74

Noes: Asay, Bliss, Devlin, Hannah, Harp, Jones, Koehnke, Lybeck, Mueller, Nordtvedt, Ramirez, Ryan, Sales, Sands, Schultz, Smith, Stobie, Swift, Switzer, Vinger, Wallin.
Total 21

Excused: Waldron.
Total 1

Absent or not voting: Marks, Thoft, Winslow, Yardley.
Total 4

Representative Waldron present at this time.

HB 908 - That the free conference committee report on HB 908 be adopted. Motion carried as follows:

Ayes: Abrams, Addy, Bengtson, Bergene, Bertelsen, Bliss, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Ellerd, Ellison, Ernst, Eudaily, Fabrega, Fagg, Farris, Hammond, Hand, Hannah, Hansen, Hanson, Harper, Hemstad, Holliday, Howe, Iverson, Jacobsen, R. Jensen, Kadas, Keenan, Kemmis, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, Marks, Metcalf, Miller, Mueller, Neuman, Nilson, Nisbet, Nordtvedt, O'Connell, Pavlovich, Phillips, Pistoria, Quilici, Ramirez, Ream, Roush, Sales, Sands, Saunders, Schultz, Seifert, Shontz, Spaeth, Swift, Switzer, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Yardley, Zabrocki.
Total 77

Noes: Asay, Bachini, Bardanouve, Brand, D. Brown, Dozier, Driscoll, Harp, Harrington, Hart, J. Jensen, Jones, McCormick, Menahan, Peck, Ryan, Schye, Smith, Solberg, Stobie, Underdal.
Total 21

Excused: None.
Total 0

Absent or not voting: Manuel, Thoft.
Total 2

HB 83 - That the free conference committee report on HB 83 be adopted. Motion carried as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bengtson, Bergene, Bertelsen, Bliss, Brand, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Driscoll, Ellerd, Ernst, Eudaily, Fabrega, Fagg, Farris, Hammond, Hand, Hannah, Hansen, Hanson, Harp, Harper, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kemmis, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nilson, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Roush, Ryan, Sales, Sands, Saunders, Schultz, Schye, Seifert, Shontz, Smith, Solberg, Spaeth,

NINETIETH LEGISLATIVE DAY

Helena, Montana
April 21, 1983

House Chambers
State Capitol

House convened at 9:00 a.m., Mr. Speaker in the Chair. Invocation by the Chaplain, Reverend Harper. Pledge of Allegiance to the Flag.

Roll call. All members present. Quorum present.

Mr. Speaker: We, your Committee on Legislative Administration/Bills and Journal, having examined the daily journals for the eighty-seventh, eighty-eighth, and eighty-ninth legislative days, find the same to be correct.

Menahan, Chairman

COMMUNICATIONS AND PETITIONS

A memo from the Legislative Attache Party Committee was read announcing that the extra money from the attache party will be donated to the Salvation Army and the Special Olympics.

REPORTS OF STANDING COMMITTEES

BILLS (Menahan, Chairman): 4/20/83
Examined by the sponsor (Manuel) and found to be correct: HB 558.
Examined by the sponsor (Harper) and found to be correct: HB 23.
Examined by the sponsor (Brand) and found to be correct: HB 668.
Examined by the sponsor (Bardanouve) and found to be correct: HJR 38.

REPORTS OF SELECT COMMITTEES

Free Conference Committee
on HB 447
Report No. 1, April 20, 1983

Mr. President and Speaker of the House:

We, your free conference committee on HB 447, met April 20, 1983, and considered the amendments of the following committees:

Senate Committee on Finance and Claims

Senate Committee of the Whole

We recommend that:

The House accede to all Senate amendments.

HB 447 be further amended as indicated in the clerical instructions.

The free conference committee report on HB 447 be adopted.

Clerical Instructions:

BOILER PLATE
AMENDMENTS TO HB 447

BP1. Page 3.
Following: line 22
Insert: "Section 11. Coal tax trust income. Interest income from the coal tax constitutional trust fund established under Article IX, section 5 of the Montana Constitution is hereby appropriated to the

Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Kadas, Keenan, Kennerly, Keyser, Kitselman, Koehnke, Lybeck, McBride, McCormick, Marks, Menahan, Metcalf, Miller, Mueller, Neuman, Nilson, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Roush, Ryan, Sales, Sands, Saunders, Schultz, Schye, Seifert, Shontz, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Yardley, Zabrocki, Mr. Speaker.
Total 95

Noes: None.
Total 0

Excused: Ellerd, Jones, Manuel, Smith.
Total 4

Absent or not voting: Lory.
Total 1

HB 871, free conference committee report, adopted as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bengtson, Bergene, Bertelsen, Bliss, Brand, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Driscoll, Ernst, Eudaily, Fabrega, Fagg, Farris, Hammond, Hand, Hannah, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Kadas, Keenan, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Menahan, Metcalf, Miller, Mueller, Neuman, Nilson, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Ramirez, Ream, Roush, Ryan, Sales, Sands, Saunders, Schultz, Schye, Seifert, Shontz, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Yardley, Zabrocki, Mr. Speaker.
Total 94

Noes: None.
Total 0

Excused: Ellerd, Jones, Manuel, Smith.
Total 4

Absent or not voting: Ellison, Quilici.
Total 2

HB 909, Senate amendments, concurred in as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bengtson, Bergene, Bertelsen, Bliss, Brand, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Driscoll, Ellison, Ernst, Eudaily, Fabrega, Fagg, Hammond, Hand, Hannah, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, R. Jensen, Kadas, Keenan, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Menahan, Metcalf, Miller, Mueller, Neuman, Nilson, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ramirez, Roush, Ryan, Sales, Sands, Saunders, Schultz, Seifert, Shontz, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Yardley, Zabrocki, Mr. Speaker.
Total 91

Noes: Farris, J. Jensen, Nisbet, Ream, Schye.
Total 5

Excused: Ellerd, Jones, Manuel, Smith.
Total 4

Absent or not voting: None.
Total 0

SB 465 concurred in as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bengtson, Bergene, Bertelsen, Bliss, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Driscoll, Ellison, Ernst, Eudaily, Fabrega, Fagg, Farris, Hammond, Hand, Hannah, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, R. Jensen, Kadas, Keenan, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Menahan, Miller, Mueller, Neuman, Nilson, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Roush, Ryan, Sales, Sands, Saunders, Schultz, Schye, Seifert, Shontz, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Yardley, Mr. Speaker.
Total 91

Noes: Brand, J. Jensen, Metcalf, Veleber, Zabrocki.
Total 5

Excused: Ellerd, Jones, Manuel, Smith.
Total 4

Absent or not voting: None.
Total 0

REPORTS OF STANDING COMMITTEES

BILLS (Menahan, Chairman): 4/21/83

Correctly enrolled: HB 171, HB 335, HB 581.

Examined by the sponsor (Fabrega) and found to be correct: HB 581.

Examined by the sponsor (Nilson) and found to be correct: HB 335.

Examined by the sponsor (Williams) and found to be correct: HB 171.

Signed by the Speaker at 10:40 a.m., 4/21/83: HB 23, HB 47, HB 225, HB 281, HB 299, HB 558, HB 668, HB 720, HB 846, HJR 19, HJR 38, SB 428, SB 429.

Delivered to the Governor for his approval at 9:50 a.m., 4/21/83: HB 112, HB 114, HB 191, HB 334, HB 376, HB 377, HB 544, HB 545, HB 597, HB 755, HB 802, HB 815, HB 819, HB 820, HB 847, HB 876, HB 898, HB 914, HB 919.

Delivered to the Governor for his approval at 10:30 a.m., 4/21/83: HB 405, HB 510, HB 600, HB 733, HB 800, HB 880.

Delivered to the Governor for his approval at 11:50 a.m., 4/21/83: HB 53, HB 187, HB 232, HB 319, HB 407, HB 428, HB 663, HB 798, HB 825, HB 873, HB 902.

Delivered to the Secretary of State at 11:45 a.m., 4/21/83: HJR 31.

REPORTS OF SELECT COMMITTEES

Conference Committee
on HB 745
Report No. 1, April 21, 1983

Mr. President and Speaker of the House:

We, your conference committee on Senate amendments to HB 745, met April 21, 1983, and considered the amendments of the following committees:

NINETIETH LEGISLATIVE DAY

Helena, Montana
April 21, 1983

Senate Chambers
State Capitol

Senate convened at 9:00 a.m., President Stephens presiding. Invocation by the Chaplain. Pledge of Allegiance to the Flag.

Roll call. All members present. Quorum present.

Mr. President: We, your Committee on Bills and Journal, having examined the daily journal for the eighty-ninth legislative day, find the same to be correct.

Tveit, Chairman

REPORTS OF STANDING COMMITTEES

BILLS (Tveit, Chairman):
Delivered to the Governor for his approval at 8:30 a.m., 4/21/83: SB 270, SB 456.

STATE ADMINISTRATION (Story, Chairman):
Communication of the Governor dated April 20, 1983, wherein the names of:

John Astle, Butte, Montana, appointed for a term ending January 7, 1985;

Lloyd Markell, Helena, Montana, appointed for a term ending January 7, 1985;

Jerald Hudspeth, Glendive, Montana, appointed for a term ending January 1, 1987;

Francis J. Raucci, Great Falls, Montana, appointed for a term ending January 1, 1987;

Alan L. Joscelyn, Helena, Montana, appointed for a term ending January 7, 1985;

were submitted as appointments to the:

Board of Personnel Appeals.

Respectfully report as follows:

That said appointments be concurred in and confirmed by the Senate, and that the attached resolution be adopted by the Senate.

Be concurred in and confirmed. Report adopted.

Communication of the Governor dated April 14, 1983, wherein the names of:

P. L. Kathrein, O.D., Great Falls, Montana, appointed as an optometrist for a term ending April 3, 1987;

Sara Gertrude Malone, Big Fork, Montana, appointed as a public member for a term ending February 20, 1987;

were submitted as appointments to the:

Board of Optometrists.

Respectfully report as follows:

Goodover, Graham, Haffey, Hager, Halligan, Hammond, Hazelbaker, Himsl, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Shaw, Smith, Stimatz, Story, Thomas, Towe, Turnage, Tveit, Van Valkenburg, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

HB 83 - That the free conference committee report on HB 83 be adopted. Motion carried as follows:

Ayes: Aklestad, Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Dover, Eck, Elliott, Etchart, Fuller, Gage, Galt, Goodover, Graham, Haffey, Hager, Halligan, Hammond, Hazelbaker, Himsl, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Shaw, Smith, Stimatz, Story, Thomas, Towe, Turnage, Tveit, Van Valkenburg, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 170 - That the free conference committee report on SB 170 be adopted. Motion carried as follows:

Ayes: Aklestad, Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Dover, Eck, Elliott, Etchart, Fuller, Gage, Galt, Goodover, Graham, Haffey, Hager, Halligan, Hammond, Hazelbaker, Himsl, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Shaw, Smith, Stimatz, Story, Thomas, Towe, Turnage, Tveit, Van Valkenburg, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

HB 908 - That the free conference committee report on HB 908 be adopted. Motion carried as follows:

Ayes: Aklestad, Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Dover, Eck, Elliott, Etchart, Fuller, Gage, Galt, Goodover, Graham, Haffey, Hager, Halligan, Hammond, Hazelbaker,

Himsl, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Shaw, Smith, Stimatz, Story, Thomas, Towe, Turnage, Tveit, Van Valkenburg, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

HJR 33 - That HJR 33, without objection, be moved to the bottom of the board.

HB 739 - That the free conference committee report on HB 739 be adopted.

Substitute motion that the free conference committee report on HB 739 be rejected. Motion failed as follows:

Ayes: Aklestad, Crippen, Dover, Elliott, Etchart, Gage, Galt, Goodover, Hammond, Keating, Kolstad, Lee, McCallum, Mohar, Ochsner, Severson, Smith, Story, Tveit, Mr. President.
Total 20

Noes: Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Daniels, Eck, Fuller, Graham, Haffey, Halligan, Hazelbaker, Jacobson, Lane, Lynch, D. Manning, R. Manning, Marbut, Mazurek, Norman, Regan, Shaw, Stimatz, Thomas, Towe, Turnage, Van Valkenburg.
Total 28

Excused: None.
Total 0

Absent or not voting: Hager, Himsl.
Total 2

That the free conference committee report on HB 739 be adopted. Motion carried as follows:

Ayes: Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Daniels, Eck, Elliott, Fuller, Graham, Haffey, Halligan, Hazelbaker, Himsl, Jacobson, Lane, Lynch, D. Manning, R. Manning, Mazurek, Norman, Regan, Stimatz, Thomas, Towe, Turnage, Van Valkenburg.
Total 28

Noes: Aklestad, Crippen, Dover, Etchart, Gage, Galt, Goodover, Hammond, Keating, Kolstad, Lee, Marbut, McCallum, Mohar, Ochsner, Severson, Shaw, Smith, Story, Tveit, Mr. President.
Total 21

Excused: None.
Total 0

Absent or not voting: Hager.
Total 1

HB 871 - That the free conference committee report on HB 871 be adopted. Motion carried as follows:

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

HB 908, free conference committee report, adopted as follows:

Ayes: Aklestad, Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Dover, Eck, Elliott, Etchart, Fuller, Gage, Galt, Goodover, Graham, Haffey, Hager, Halligan, Hammond, Hazelbaker, Himsl, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Smith, Stimatz, Story, Thomas, Towe, Turnage, Tveit, Van Valkenburg, Mr. President.
Total 48

Noes: R. Manning, Shaw.
Total 2

Excused: None.
Total 0

Absent or not voting: None.
Total 0

HB 739, conference committee report, adopted as follows:

Ayes: Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Daniels, Eck, Elliott, Fuller, Graham, Haffey, Halligan, Hazelbaker, Himsl, Jacobson, Lynch, D. Manning, R. Manning, Mazurek, Norman, Ochsner, Regan, Smith, Stimatz, Story, Thomas, Towe, Turnage, Tveit, Van Valkenburg, Mr. President.
Total 32

Noes: Aklestad, Crippen, Dover, Etchart, Gage, Galt, Goodover, Hammond, Keating, Kolstad, Lane, Lee, Marbut, McCallum, Mohar, Severson, Shaw.
Total 17

Excused: None.
Total 0

Absent or not voting: Hager.
Total 1

HB 871, free conference committee report, adopted as follows:

Ayes: Aklestad, Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Dover, Eck, Elliott, Etchart, Fuller, Gage, Galt, Goodover, Graham, Haffey, Hager, Halligan, Hammond, Hazelbaker, Himsl, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Shaw, Smith, Stimatz, Story, Thomas, Towe, Turnage, Tveit, Van Valkenburg, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

HOUSE BILL NO. 908

INTRODUCED BY HARPER, BARDANOUVE, IVERSON, VINCENT, KEMMIS, ASAY, FABREGA

A BILL FOR AN ACT ENTITLED: "AN ACT ~~ADDING--CERTAIN PIPELINES--TO-THE-DEFINITION-OF-"FACILITY"-UNDER-THE-MONTANA MAJOR-FACILITY--SITING--ACT;--PROHIBITING--THE--ISSUANCE--OF PERMITS--FOR--CERTAIN--AMOUNTS--OF-WATER-WITHOUT-LEGISLATIVE APPROVAL;-PROVIDING-FOR-A-STUDY-BY--A--SELECT--COMMITTEE--OF WATER-MARKETING~~ PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER; ~~PROVIDING--AN---APPROPRIATION;~~ AMENDING SECTIONS ~~75-20-104,---75-20-216,---75-20-218,--75-20-303,--75-20-304,~~ ~~75-20-1202,~~ 85-1-205, AND 85-2-311, MCA; REPEALING SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section-1.--Section-75-20-104,-MCA,-is-amended-to-read:~~

~~"75-20-104.--Definitions.---In-this-chapter,-unless-the context-requires-otherwise,-the-following-definitions-apply:~~

~~(1)--"Addition-thereto"-means-the-installation--of--new machinery-and-equipment-which-would-significantly-change-the conditions-under-which-the-facility-is-operated.~~

~~(2)--"Application"---means---an---application---for---a certificate-submitted-in-accordance-with--this--chapter--and the-rules-adopted-hereunder.~~

~~(3)--"Associated---facilities"---includes--but--is--not limited-to-transportation--links--of--any--kind,--aqueducts, diversion--dams,--transmission--substations,--storage-ponds, reservoirs,-and-any-other--device--or--equipment--associated with--the--production--or--delivery--of--the--energy-form-or product-produced-by-a-facility,-except-that--the--term--does not-include-a-facility.~~

~~(4)--"Board"--means--the-board-of-natural-resources-and conservation-provided-for-in-2-15-3302.~~

~~(5)--"Board-of-health"-means-the-board--of--health--and environmental-sciences-provided-for-in-2-15-2104.~~

~~(6)--"Certificate"----means----the----certificate----of environmental-compatibility-and-public-need--issued--by--the board---under---this---chapter--that--is--required--for--the construction-or-operation-of-a-facility.~~

~~(7)--"Commence-to-construct"-means:~~

~~(a)--any-clearing-of-land,-excavation,-construction,-or other-action-that-would-affect-the-environment-of--the--site or--route-of-a-facility-but-does-not-mean-changes-needed-for temporary-use-of-sites-or-routes-for-nonutility-purposes--or uses---in--securing--geological--data,--including--necessary borings-to-ascertain-foundation-conditions;~~

~~(b)--the-fracturing-of-underground--formations--by--any~~

REFERENCE BILL: Includes Free Joint Conference Committee Report Dated 4-20-83

means--if--such--activity--is-related-to-the-possible-future development--of--a--gasification--facility--or--a---facility employing--geothermal--resources--but--does--not-include-the gathering-of-geological-data-by--boring--of--test--holes--or other----underground----exploration,----investigation,----or experimentation;

(c)--the-commencement--of--eminent--domain--proceedings under--Title--70,-chapter-30,-for-land-or-rights-of-way-upon or-over-which-a-facility-may-be-constructed;

(d)--the--relocation--or--upgrading--of---an---existing facility-defined-by-(b)-or-(c)-of-subsection-(10),-including upgrading---to--a--design--capacity--covered--by--subsection (10)(b),-except--that--the--term--does--not--include--normal maintenance-or-repair-of-an-existing-facility.

(8)--"Department"---means--the--department--of--natural resources-and-conservation-provided-for-in-Title-2,--chapter 15,-part-33.

(9)--"Department--of--health"--means--the-department-of health-and-environmental-sciences-provided-for-in--Title--2, chapter-15,-part-21.

(10)-"Facility"-means:

(a)--except--for--crude-oil-and-natural-gas-refineries, ans-facilities-and-associated--facilities--designed--for--or capable--of--producing,-gathering,-processing,-transmitting, transporting,-or-distributing-crude-oil-or-natural-gas,--and

those---facilities---subject---to---the--Montana--Strip--and Underground-Mine-Reclamation-Act,-each-plant,-unit,-or-other facility-and-associated-facilities-designed-for--or--capable of:

(i)--generating--50-megawatts-of-electricity-or-more-or any-addition-thereto-(except--pollution--control--facilities approved--by--the--department--of--health--and-environmental sciences-added-to-an-existing--plant)--having--an--estimated cost-in-excess-of-$10-million;

(ii)-producing--25--million--cubic--feet-or-more-of-gas derived-from-coal-per-day-or-any-addition-thereto-having--an estimated-cost-in-excess-of-$10-million;

(iii)-producing--25,000--barrels--of-liquid-hydrocarbon products-per-day-or-more-or-any-addition-thereto--having--an estimated-cost-in-excess-of-$10-million;

(iv)-enriching-uranium-minerals-or-any-addition-thereto having-an-estimated-cost-in-excess-of-$10-million;-or

(v)--utilizing--or--converting-500,000-tons-of-coal-per year-or-more-or-any-addition--thereto--having--an--estimated cost-in-excess-of-$10-million;

(b)--each--electric--transmission--line--and-associated facilities-of-a-design-capacity-of-more-than--69--kilovolts, except---that---the---term--does--not--include--an--electric transmission-line-and--associated--facilities--of--a--design capacity--of--230--kilovolts-or-less-and-10-miles-or-less-in

~~length;~~

~~(c) each pipeline and associated facilities designed for or capable of transporting gas (except for natural gas, water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection (10)(a) of this section;~~

~~(d) each pipeline greater than 20 inches in diameter or AND 30 miles in length and associated facilities designed AND INTENDED for or capable of transporting water or using water as a transport medium;~~

~~(d)(e) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million btu per hour or more or any addition thereto having an estimated cost in excess of $750,000;~~

~~(e)(f) any underground in situ gasification of coal;~~

~~(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.~~

~~(12) "Transmission substation" means any structure, device, or equipment assemblage commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a~~

~~proposed transmission line.~~

~~(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use.~~

~~Section 2. Section 75-20-216, MCA, is amended to read:~~

~~"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies. (1) After receipt of an application, the department and department of health shall within 90 days notify the applicant in writing that:~~

~~(a) the application is in compliance and is accepted as complete; or~~

~~(b) the application is not in compliance and lists the deficiencies therein; and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.~~

~~(2) Upon receipt of an application complying with 75-20-211 through 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order,~~

certification, or permit as provided in subsection (3). The department and department of health shall use, to the extent they consider applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health shall within 1 year following the date of acceptance of an application and the board of health or department of health, if applicable, within an additional 6 months issue any decision, opinion, order, certification, or permit required under the laws administered by the department of health or the board of health and this chapter. The department of health and the board of health shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit with or without conditions is conclusive on all matters that the department of health and board of health administer, and any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the determinations made under the laws administered by the department of health and the board of health. Although the decision, opinion, order, certification, or permit issued under this subsection is

conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). The decision, opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board and shall be utilized as part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in (a) and (d) (e) of 75-20-104(10) and for a facility as defined in (b) and (c) through (d) of 75-20-104(10) which is more than 30 miles in length and within 1 year for a facility as defined in (b) and (c) through (d) of 75-20-104(10) which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation and an environmental impact statement or analysis prepared pursuant

to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of highways; commerce; fish, wildlife, and parks; state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required reports."

Section 3. Section 75-20-216, MCA, is amended to read:

"75-20-216. Hearing -- date -- location -- department to act as staff -- hearings to be held jointly. (1) Upon receipt of the department's report submitted under 75-20-215, the board shall set a date for a hearing to begin not more than 120 days after the receipt, except for those hearings involving applications submitted for facilities as defined in (b) and (c) of 75-20-104(10), certification certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in

which the facility or the greater portion thereof is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department of health and the board of health shall hold any required permit hearings required under laws administered by those agencies in conjunction with the board certification hearings. In such a conjunctive hearing the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the department of health and the board of health."

Section 4. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision -- contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it

shall state in its opinion the reasons therefor.

(3) Any certificate issued by the board shall include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facility;

(v) a plan for monitoring environmental effects of the proposed facility; and

(vi) a time limit as provided in subsection (4), during which construction of the facility must be completed;

(b) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) The board shall issue as part of the certificate the following time limits during which construction of a facility must be completed:

(a) For a facility as defined in (b), (c), or (d) of 75-20-104(7), that is more than 30 miles in length, the time limit is 10 years.

(b) For a facility as defined in (b), (c), or (d) of 75-20-104(7), that is 30 miles or less in length, the time limit is 5 years.

(c) The time limit shall be extended for periods of 2 years each upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction. Under this subsection, a good faith effort to complete construction includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced."

Section 5. Section 75-20-304, MCA, is amended to read:

"75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the

provisions of this chapter upon receipt of notice by a utility or person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of subsections (2)(c), (3)(b), and (3)(c) of 75-20-301 and 75-20-501(5) and the requirements of subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 25 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructed within a

15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in subsections (10)(b), (c), (d), (e), or (f) of 75-20-104, for an associated facility defined in subsection (3) of 75-20-104, or for any portion of or process in a facility defined in subsection (10)(a) of 75-20-104 to the extent that the process or portion of the facility is not subject to a permit issued by the department of health or board of health.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection shall be credited toward the fee paid under 75-20-215 to the extent the data or evidence presented at

~~the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.~~

~~(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a).~~"

~~Section 6. Section 75-20-1202, MCA, is amended to read:~~

~~"75-20-1202. Definitions. As used in this part and 75-20-201 through 75-20-203, the following definitions apply:~~

~~(1)(a) "Nuclear facility" means each plant, unit, or other facility designed for, or capable of:~~

~~(i) generating 50 megawatts of electricity or more by means of nuclear fission;~~

~~(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or~~

~~(iii) storing or disposing of radioactive wastes or materials from a nuclear facility;~~

~~(b) "nuclear facility" does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy.~~

~~(2) "Facility," as defined in 75-20-104(7)(a) is further defined to include any nuclear facility as defined in subsection (1)(a) of this section.~~"

Section 1. Section 85-1-205, MCA, is amended to read:

"85-1-205. Acquisition of water in ~~Fort Peck Reservoir~~ federal reservoirs. (1) The department may acquire water OR WATER STORAGE by purchase option or agreement with the federal government from ~~the Fort Peck Reservoir~~ any federal reservoir for the purpose of sale, rent, or distribution for industrial use AND OTHER USES. In such cases, the department is not required to construct any diversion or appropriation facilities or works, and it may sell, rent, or distribute such water at such rates and under such terms and conditions ~~as it considers appropriate~~ as are established under the provisions of 85-2-311 AS IT CONSIDERS APPROPRIATE, EXCEPT AS PROVIDED IN SUBSECTION (2).

(2) UNTIL A FINAL DECREE HAS BEEN ISSUED PURSUANT TO 85-2-234 CONCERNING THE WATERS IN A FEDERAL RESERVOIR, THE DEPARTMENT MAY SELL, RENT, OR DISTRIBUTE SUCH WATER ONLY AFTER A PERMIT HAS BEEN ISSUED TO AN APPLICANT FOR PURCHASE, RENT, OR DISTRIBUTION OF WATER IN ACCORDANCE WITH PART 3 OF THIS CHAPTER."

Section 2. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. ~~The~~ (1) Except as provided in subsections (2) ~~and (3)~~ ~~THROUGH (4)~~ AND (3), the department shall issue a permit if the applicant proves by substantial credible evidence that the following

criteria are met:

(a) there are unappropriated waters in the source of supply:

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount the applicant seeks to appropriate; and

(iii) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(b) the rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

~~(6) an applicant for an appropriation of 10,000 acre-feet a year or more and 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected;~~

~~(7) except as provided in subsection (6), the applicant proves by substantial credible evidence the~~

~~criteria listed in subsections (1) through (5).~~

~~(2) (a) The department may not issue a permit for an appropriation of 5,000 10,000 or more acre-feet of water a year or 7 15 or more cubic feet per second of water unless:~~

~~(i) the department makes an affirmative finding that:~~

~~(A) the criteria in subsection (1) are met;~~

~~(B) the applicant has proven by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected; and~~

~~(C) the proposed appropriation is in the public interest; and~~

~~(ii) the legislature affirms the findings pursuant to subsection (2)(a)(i).~~

~~(b) In making such a finding, the department shall consider:~~

~~(i) existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;~~

~~(ii) the benefits to the applicant and the state;~~

~~(iii) the economic feasibility of the project;~~

~~(iv) the effects on the quantity, quality, and potability of water of existing beneficial uses in the source of supply;~~

~~(v)--the--effects--on--private--property--rights--by--any creation--of--or--contribution--to--saline--seept--and~~

~~(vi)--the--probable--significant--adverse--environmental impacts--of--the--proposed--use--of--water--as--determined--by--the department--pursuant--to--Title--75,--chapter--1,--or--Title--75, chapter--20.~~

~~(c)--A--permit--for--an--appropriation FOR--A--DIVERSION--FOR A--CONSUMPTIVE--USE of 5,000 10,000 or--more--acre-feet--of--water a--year--or 1 15 or--more--cubic--feet--per--second--of--water--under subsection--(2)--may--not--be--issued--unless--the--department petitions--the--legislature--and--the--legislature--affirms--the findings--of--the--department.~~

~~(2)--THE--DEPARTMENT--MAY--NOT--ISSUE--A--PERMIT--FOR--AN APPROPRIATION--OF--10,000--OR--MORE--ACRE--FEET--OF--WATER--A--YEAR--OR 15--OR--MORE--CUBIC--FEET--PER--SECOND--OF--WATER--UNLESS--THE APPLICANT--HAS--PROVEN--BY--CLEAR--AND--CONVINCING--EVIDENCE--THAT THE--RIGHTS--OF--A--PRIOR--APPROPRIATOR--WILL--NOT--BE--ADVERSELY AFFECTED.~~

~~(2)(3)--A--PERMIT--FOR--AN--APPROPRIATION--OF--10,000--OR--MORE ACRE--FEET--OF--WATER--A--YEAR--OR--15--OR--MORE--CUBIC--FEET--PER SECOND--OF--WATER--ON--APPLICATIONS--FILED--WITH--THE--DEPARTMENT AFTER--[THE--EFFECTIVE--DATE--OF--THIS--ACT]--MAY--NOT--BE--ISSUED UNLESS--THE--DEPARTMENT--PETITIONS--THE--LEGISLATURE--AND--THE LEGISLATURE--AFFIRMS--THE--ISSUANCE--BY--THE--DEPARTMENT.~~

(2) (A) THE DEPARTMENT MAY NOT ISSUE A PERMIT FOR AN APPROPRIATION OF 10,000 OR MORE ACRE-FEET OF WATER A YEAR OR 15 OR MORE CUBIC FEET PER SECOND OF WATER UNLESS IT AFFIRMATIVELY FINDS:

(I) THE CRITERIA IN SUBSECTION (1) ARE MET;

(II) THE APPLICANT HAS PROVEN BY CLEAR AND CONVINCING EVIDENCE THAT THE RIGHTS OF A PRIOR APPROPRIATOR WILL NOT BE ADVERSELY AFFECTED;

(III) THE PROPOSED APPROPRIATION IS A REASONABLE USE. SUCH A FINDING SHALL BE BASED ON A CONSIDERATION OF THE FOLLOWING:

(A) THE EXISTING DEMANDS ON THE STATE WATER SUPPLY, AS WELL AS PROJECTED DEMANDS SUCH AS RESERVATIONS OF WATER FOR FUTURE BENEFICIAL PURPOSES, INCLUDING MUNICIPAL WATER SUPPLIES, IRRIGATION SYSTEMS, AND MINIMUM STREAMFLOWS FOR THE PROTECTION OF EXISTING WATER RIGHTS AND AQUATIC LIFE;

(B) THE BENEFITS TO THE APPLICANT AND THE STATE;

(C) THE ECONOMIC FEASIBILITY OF THE PROJECT;

(D) THE EFFECTS ON THE QUANTITY, QUALITY, AND POTABILITY OF WATER FOR EXISTING BENEFICIAL USES IN THE SOURCE OF SUPPLY;

(E) THE EFFECTS ON PRIVATE PROPERTY RIGHTS BY ANY CREATION OF OR CONTRIBUTION TO SALINE SEEP; AND

(F) THE PROBABLE SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS OF THE PROPOSED USE OF WATER AS DETERMINED BY THE DEPARTMENT PURSUANT TO TITLE 75, CHAPTER 1, OR TITLE 75,

CHAPTER 20.

(B) A PERMIT FOR AN APPROPRIATION FOR A DIVERSION FOR A CONSUMPTIVE USE OF 10,000 OR MORE ACRE-FEET OF WATER A YEAR OR 15 OR MORE CUBIC FEET PER SECOND OF WATER UNDER THIS SUBSECTION MAY NOT BE ISSUED UNLESS THE DEPARTMENT PETITIONS THE LEGISLATURE AND THE LEGISLATURE AFFIRMS THE FINDINGS OF THE DEPARTMENT.

~~(3)~~~~(4)~~(3) An appropriation, diversion, impoundment, restraint, or attempted appropriation, diversion, impoundment, or restraint contrary to the provisions of this section is null and void. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized appropriation, diversion, impoundment, or other restraint. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, or otherwise restrain or control ~~any of the~~ waters within the boundaries of this state except in accordance with this section."

NEW SECTION. Section 3. Repealer. Section 85-1-121, MCA, is repealed.

NEW SECTION. Section 4. Study of water marketing. (1) There is a select committee on water marketing. The select committee consists of eight members. The senate committee on committees and the speaker of the house of representatives

shall each appoint four members on a bipartisan basis. The select committee shall meet as often as necessary to complete the study of water marketing required under this section.

(2) The select committee on water marketing shall undertake a study of the economic, tax, administrative, legal, social, and environmental advantages and disadvantages of water marketing.

(3) The select committee shall study the desirability and feasibility of in-state and out-of-state marketing of limited amounts of water for industrial purposes from existing state and federal reservoirs and from proposed reservoirs with water reservations.

(4) The study must include:

(a) the present and future in-state demands for water for domestic, municipal, agricultural, industrial, recreational, in-stream flows, and other beneficial uses;

(b) how best to encourage a negotiated resolution of the conflicting demands of water users within the Missouri River basin and to discourage litigation and congressional action initiated by lower basin states;

(c) the potential effects of a coal slurry pipeline on coal production and the economic and environmental effects of increased coal production;

(d) the effects of a coal slurry pipeline on the

railroad industry and rail rates for noncoal shippers;

(e) alternative structures for a water marketing program;

(f) alternative uses of revenue derived from water marketing; and

(g) the potential ecological effects of the installation and operation of coal slurry pipelines.

(5) The select committee shall solicit the advice of the department of natural resources and conservation, various interested industries, conservation groups, appropriate state and federal agencies, and the public in carrying out its duties under this section.

(6) The environmental quality council shall provide staff assistance to the select committee. The select committee may contract with experts and consultants, in addition to assistance from the environmental quality council staff, in carrying out its duties under this section.

(7) The select committee shall report its findings and recommendations for legislation, if any, to the 49th legislature.

~~NEW SECTION. Section 11. Appropriation. There is appropriated from the renewable resource development clearance fund account to the environmental quality council for the biennium ending June 30, 1985, $80,000 for the study of water marketing by the select committee on water marketing required by section 10.~~

NEW SECTION. Section 5. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 6. Effective date. This act is effective on passage and approval.

SECTION 7. TERMINATION DATE. THIS ACT TERMINATES JULY 1, 1985.

-End-